# LEGAL BIBLIOGRAPHY

## NEW SERIES

ISSUED QUARTERLY

Vol. IV JANUARY, 1910 Number 1

"Deterred neither by misrepresentation nor unpopularity, the **ADVOCATE**, true to his **OATH** and **OFFICE** in proportion as such difficulties surround him, will rise with mightier effort to vindicate by his courage and learning, in behalf of his client, both his honor and his profession."

THE BOSTON BOOK COMPANY, Publishers

83-91 FRANCIS ST., FENWAY BOSTON, MASS.

# DIAGRAM

## OF STATE AND FEDERAL POWER

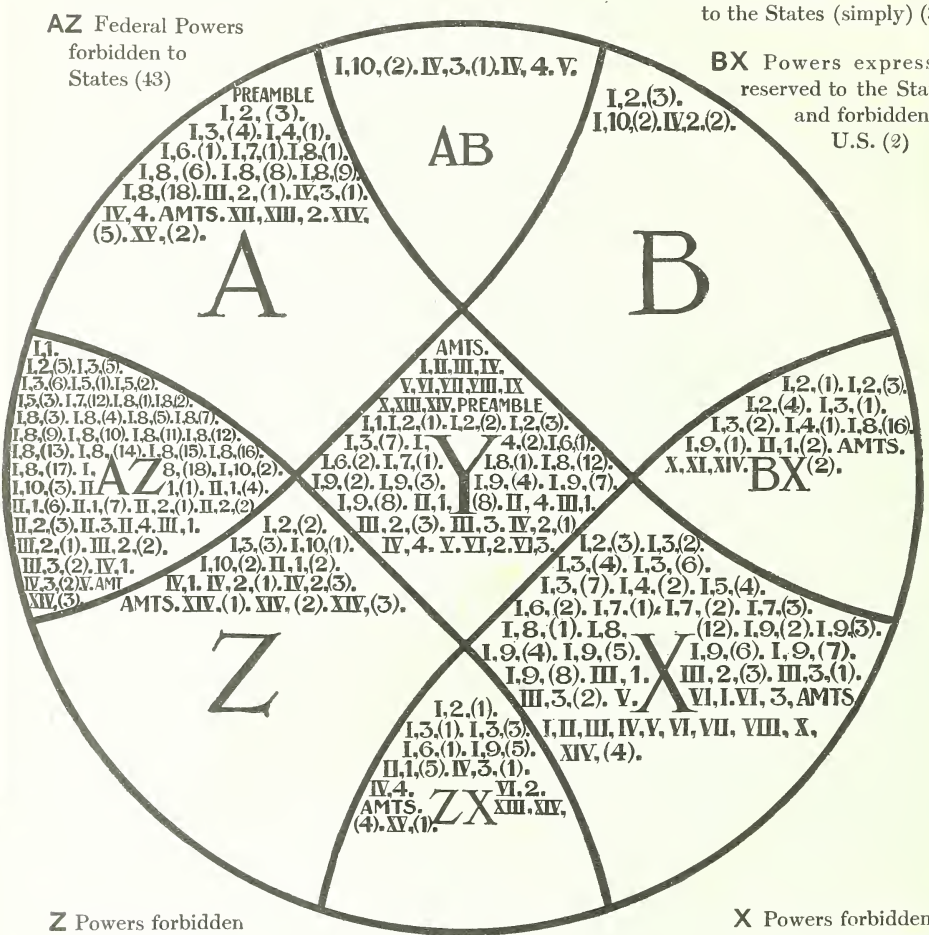
**AB** Federal and State Powers (4)

**A** Federal Powers (17)

**AZ** Federal Powers forbidden to States (43)

**B** Powers expressly reserved to the States (simply) (3)

**BX** Powers expressly reserved to the States and forbidden to U.S. (2)




**Z** Powers forbidden to the States (simply) (11)

**X** Powers forbidden to U.S. (simply) (37)

**Y** Rights or Powers reserved in the People (39)

**ZX** Powers forbidden to both States and U.S. (12)

*See page 108*

# Legal Bibliography.

No. 1, Vol. 4, N. S. BOSTON, MASS. January, 1910

## LEGAL BIBLIOGRAPHY

The present series was started in Nov. 1894. The second number was issued in Nov. 1898. In Jan. 1900, the plan was changed and a third number issued. Since then the numbers have appeared quarterly.

Three volumes are now complete. In these three volumes are many articles on legal bibliography that are worth preservation.

A limited number of sets, bound in half roan, are now available, at $1.50 per volume.

**Commonwealth Law Review.** This periodical, we are informed, was discontinued after the completion of volume 6. It will soon become difficult to obtain even at an advanced price. We have a few sets now in stock which we can furnish at the published price.

**Diagram.** This is the frontispiece to **Stimson's Federal** and **State Constitutions.** A fuller description can be found on page 10.

## CHOSES IN ACTION.

A certain lawyer arguing a case before a justice of the peace came across the expression, "choses in action," in a decision from which he was quoting to the court. Fearing that the justice might not understand its meaning, he stopped to explain: "Your Honor, 'choses in action,' you of course know, means that a person has several rights of action and can choose which he will pursue."

## THE GERMAN CIVIL CODE.

### American Edition.

We announce the publication of a translation of the German Civil Code, made by Walter Loewy of San Francisco (a graduate of Pennysylvania University Law Department and of Heidelberg University) under the auspices of a committee consisting of Prof. William Draper Lewis, William W. Smithers and Charles Wetherill representing the Pennsylvania Bar Association, and the Law School of the University of Pennsylvania.

The translation will have an historical introduction by William W. Smithers; an analytical introduction by Walter Loewy; full notes by Mr. Loewy and members of the committee; a list of the important Statutes of the German Empire; analyses of the divisions and titles of the code and the introductory statute; and an Index.

Before 1871 (except as to the Commercial Code) each German state had its own laws. From 1871 to 1879 the old state laws remained in force. In 1879, Codes of Procedure and a Penal Code were adopted. The Civil Code was meanwhile progressing under commissions. In 1896, a "Burgerlichesgesetzbuch" was enacted, to take effect January 1, 1900. The present legal system of Germany was thus fully launched.

The code thus adopted, presenting both a compromise and development of the legal systems of many previously independent states; and carefully formulated by a commission of the most learned jurists of the Empire,—presents as interesting a study as was the Code Napoleon a hundred years ago, or the Corpus Juris in the days of Justinian.

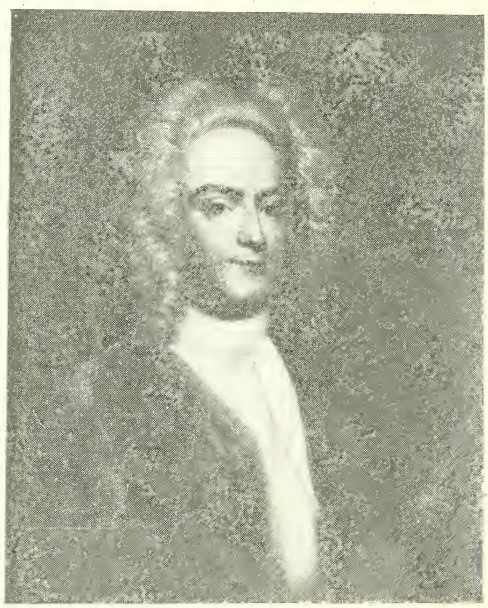
*Price*, $5.00.

## LAW REPORTING IN AMERICA.

The beginning of law reporting in this country, so far as existing records show, was in Virginia, where Sir John Randolph, Edward Barradall and William Hopkins kept memoranda in the nature of reports of the cases in which they were engaged between the years 1728 and 1743. These reports were apparently copied from time to time in manuscript and used for study and precedent by the bar of that and the subsequent generation.

The reports of Hopkins have vanished, but the manuscripts of Randolph and Barradall have been preserved in four copies, one in the Library of Congress, one at Harvard Law School, two at Richmond in the libraries of the Court of Appeals and the Virginia Historical Society.

From one of these manuscripts (or perhaps from other manuscripts since lost) Thomas Jefferson extracted a few cases which were published in the thin volume known as "Jefferson's Reports." The rest of the cases have never hitherto been printed. It seemed that these prototypes of American reporting should



SIR JOHN RANDOLPH

be put in permanent form. After consulting with the judges of the Court of Appeals, and the professors of the Law School at the University of Virginia as to the best editors for such an enterprise, the publishers were so fortunate as to get the State law librarian, W. W. Scott, to transcribe the manuscript for the printer, and R. T. Barton of Winchester, Va., to edit and annotate the reports.

## VIRGINIA COLONIAL DECISIONS.

Mr. Scott devoted to his part of the work minute care, intelligent criticism and the enthusiasm of an antiquarian. Mr. Barton, one of the leaders of the Virginia bar, was well fitted for the editorial work through familiarity with local law gained in the compilation of his two standard treatises on Common Law and Chancery practice. He had also the enthusiasm of the antiquary, the patience of the historian, and the pride of a Virginian in the early greatness of his state and its citizens.

The work appears in two volumes, the first containing the Introduction and the Reports of Sir John Randolph; the second, Barradall's Reports.

2 vols., cloth. $7.50.

## AN ORIGINAL DEFINITION.

A disciple of Coke, in Charleston, S. C., when asked by a "brudder" to explain the Latin terms "de facto" and "de jure," replied: "Dey means dot you must prove *de facts* ob de case to de satisfaction of *de jury*."

## COMMENDATION.

"The author of the 'Power of Eminent Domain' has limited the scope of his treatise to the **analysis** and **discussion** of the **underlying principles** connected with the **exercise** of that **power.** The scheme is, as is candidly admitted, somewhat narrow, but the **wide differences** prevailing in the several states as to the **practice** in **condemnation proceedings** renders a **coherent treatment** of the **procedural** side of the subject well nigh **impossible.** In fact, it is in this very department that **previous works** have proved **unsatisfactory,** and, in the hands of the unexperienced, positively **misleading."**— *Univ. of Penn. Law Review.*

## THEORY OF LAW.

**Korkunov's General Theory of Law** contains in truth parts of rare **vigor** and **originality.** As to natural law, origin of law, legal norms, the **distinction** between public and private law, the **theory** of the three powers, moral persons, the nature of society and of the state, and a good many other questions, there will not simply be found, formulated with great **precision** and uncommon force of **reasoning,** the chief theories which are at the bottom of universal **legal thought.**

From 1878 until 1889, the author (Korkunov) was professor of "Legal Encyclopedia" in the University of St. Petersburg, he having previously taught the same subject in the Imperial Alexandrian Lyceum at St. Petersburg. In 1889, he succeeded to the chair of "Public Law," in the same university, and held it until his death in 1902.

He was familiar with the writings, ancient and modern, of the theorizers of all nations. He seems to have been most strongly drawn to **English writers** and thinkers on **law** and **government,** especially John S. Mill.

Prof. W. G. Hastings, Dean of the Law Dept., Nebraska University, has now for the first time translated this work into English, in which form we know the book will inspire interest.

### CONTENTS

**Introduction.**—Necessity for Generalized Knowledge.—Encyclopædia of Law.—Philosophy of Law.—General Theory of Law.

**Book I. Conceptions of Law.**

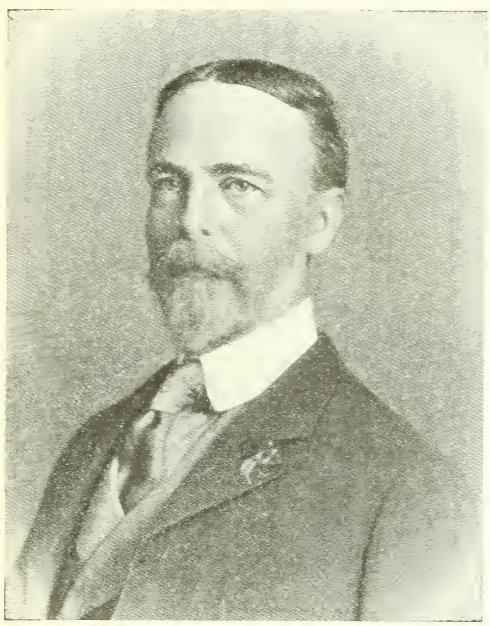
Definition of Law.—
Leading Conceptions of Law.—
Hypothesis of Natural Law.—
Origin of Law.

## A LITTLE TOO PREVIOUS.

Judge Thrasher, County Judge of Cattaraugus County, New York, has an exceptionally deliberate manner of speech. At a recent term of the county court of that county, a certain W—— was convicted for a violation of the Liquor Tax Law. In the imposition of sentence, the judge said: "I will fine you $200.00." Before anything further was said, the prisoner reached into his pocket and while taking out a roll of bills said, "I thought that would be about the size of it, and I have that money right here in my pocket." The judge thereupon concluded the terms of sentence as follows: "and three months in the Erie County Penitentiary. Have you got that in your pocket?"

## FREDERIC JESUP STIMSON.

The author of **"The Law of the Federal and State Constitutions of the United States,"** is one of the most talented and versatile, as well as one of the soundest and most profound of American authors. He was born in 1855 and graduated at Harvard in the class of 1876. His subsequent life has been one of varied activity.



**As a Lawyer,** he took his degree at the Harvard Law School in 1878, and began practice in Boston. He is a member of both the Massachusetts and the New York Bars. He was at one time Assistant Attorney-General of Massachusetts. He has had an important practice, numbering among his clients the State of Massachusetts, the United States Government and the Bank of England.

**As a Legal Author,** he has done excellent work. He wrote "American Statute Law," a "Law Glossary," "Labor in its Relations to Law," and a "Handbook to the Labor Laws of the United States." His **Law of the Federal and State Constitutions,** is an entirely novel and very important exposition of the **fundamental principles** of our system of **government,** and throws a deal of **light** on **problems** which are confronting legislatures and **courts,** and about which every citizen, certainly every **lawyer,** must make up his mind.

**As a Teacher,** he lectures at Harvard University on Comparative Legislation and Constitutional Limitations. He has recently delivered a course of lectures before the Lowell Institute of Boston, on "The Federal Powers, the Rights of the States, the Liberties of the People."

**As a Sociologist,** he has been prominent on such lines as labor legislation and uniformity of laws. Besides the two works on labor laws, he has published a volume on "Uniform State Legislation." He has been advisory counsel to the United States Industrial Commission and Massachusetts Commissioner on Uniformity of Laws; and he was chosen to draw up the present corporation code of Massachusetts.

**As a Novelist.**—Beginning to write fiction under the pseudonym of" J. S. of Dale," but using later his own name, he has published eight novels, well known to lovers of good literature.

Such is the interesting personality of the man whose portrait is shown above, and whose new work on the **Federal and State Constitutions** has attracted wide attention and favorable notice.

## THE POWER OF EMINENT DOMAIN.

No better field can be found for studying in a **practical manner** the legal problems connected with the **taking** of **private property** for **public use** than service in the legal department of a great modern municipal corporation, and to no better use can such an **invaluable experience** be put than to give its results to the profession in the form of a book.

The **Power of Eminent Domain** was compiled during the author's eleven years' service as Assistant Corporation Counsel of the City of Boston, when many of the questions discussed arose for consideration **in actual practice,** and much of the material was gathered for his use in meeting them.

The topics discussed are:—

The Power of a Sovereign State over Persons and Property within its Jurisdiction. The Limitations on that Power Arising out of the Federal Character of the Government and the Specific Provisions in the Constitutions, State and Federal. What Constitutes a Taking. Additional Servitudes. The Taking of Water and Water Rights. What Constitutes Property, Public Use and Just Compensation. What is Meant by Due Process of Law. The Rights of the Condemnor in the Property Taken.

The author has treated these **important questions** with admirable **clearness** and **candor,** never losing sight of the fact that **Eminent Domain** was born before it was baptized and cannot be **rationally considered** without taking into account the nature and history of our **political institutions.**

The criticism of **leading cases,** such as *Eaton* v. *Ry. Co.*, 51 N. H. 504 and *Callender* v. *Marsh*, 1 Pick. 418, is **instructive,** while the **conflicting doctrines** prevailing in the various jurisdictions are impartially summarized.

## DECLARATIONS AS A PART OF THE RES GESTA.

In Bedingfield's Case (14 Cox C. C. 341) Cockburn, C. J. excluded all testimony of declarations after the act was done. This ruling was much criticized, and led to a vigorous discussion of the subject in public prints, in the course of which the Lord Chief Justice issued a pamphlet in defense of his ruling.

Professor Thayer took occasion to go beyond this controversy and examine with characteristic fulness and care the **res gesta** question in all its bearings. In substantially all points the conclusions reached by him at that time stood the test of his many years of later study.

This is one of the essays that has been reproduced in **Thayer's Legal Essays,** and has been cited in 16 R. I. 528 and 95 N. Y. 274.

Professor Thayer meant to publish a single volume on **Constitutional Law.** Much of the material which would have gone into this treatise is to be found in the **Essays.** Thus in a measure they preserve the fruits of his long and deep study of constitutional topics; and illustrate—to use the words of "The Green Bag"—"the excellent and cultured style, the charming modesty, the deep learning and vigorous thinking, which mark all that Professor Thayer has written."

The essays contained in this volumes are:—

The Origin and Scope of the American Doctrine of Constitutional Law.

Advisory Opinions.

Legal Tender.

A People without Law (the American Indians).

Gelpcke *v.* Dubuque; Federal and State Decisions.

### THAYER'S LEGAL ESSAYS

Our New Possessions.

International Usages; A Step Forward.

Dicey's Law of the English Constitution.

Bedingfield's Case; Declarations as a Part of the Res Gesta.

"Law and Logic."

A Chapter of Legal History in Massachusetts.

Trial by Jury of Things Supernatural.

Bracton's Note Book.

The Teaching of English Law at Universities.

**Thayer's Legal Essays** are published in a cloth bound volume uniform in size and style with **"Korkunov's Theory of Law,"** at the same price, $3.50.

### COMPARATIVE JURISPRUDENCE.

**Wessels' History of the Roman-Dutch Law** should be especially attractive to an American reader, because the experiment of yoking this law with the Common Law in British South Africa is worth watching.

An examination of the volume reveals most important matter which commends it to the intelligent reader. Part 1, "General Development of the Dutch System of Law," is actually a historical analysis of the law of northwestern Europe from the early German and Roman periods,—through the middle ages, down to the present time. It contains an interesting account of the great law books of the 16th, 17th and 18th centuries.

**Wessels' History of the Roman-Dutch Law. Grahamstown, $10.00.**

## THE LAWYER'S OFFICIAL OATH AND OFFICE.

Why is any oath required for admission to the practice of the law? What is its significance and what obligation does it impose?

His oath stamps the lawyer as an **officer** of the State, with rights, powers and duties as important as those of the Judges of the Courts themselves. When a lawyer is admitted to practice and takes the required oath of office he has as much right to appear in Court and be heard for a party to a cause as a Judge has to hear and decide it.

He is also an officer of the Court for life whose office **cannot be taken from him** except for cause.

Josiah Henry Benton, LL.D., one of the leaders at the Boston Bar, has just written a work on the foregoing subject. He tells when that oath was framed and what it was. He shows that it was, in England and America, a condensed **code of legal ethics** until by a reaction against the multiplicity of oaths, it was changed in form to generally become a mere obligation to discharge faithfully the duties of the office. The history of the obligation is traced to the earliest authentic records in England and France, and the quaint old oaths are in many cases given in full.

Upon the foundation of the English law and its conception of the lawyer's office in England, the office was established in the Colonies in North America.

An examination is made of the legislation as to attorneys in the Colonies which became the thirteen original States of the Union, and shows how the attorney's office was recognized and established here.

This scholarly and interesting contribution to the history of the law should be read by every lawyer who takes any pride in his profession. *Price*, $1.50

## CONSTITUTIONAL PRINCIPLES.

### Division of National and State Power.

The diagram graphically represents the exact division of political and legislative power between the States and the Federal Government as well as the large field reserved by the Constitution to the people; and it does this when powers delegated to the Nation are forbidden to the States or when they are shared by the Nation and the State, or when nothing is said about it, and it must depend upon the interpretation of the Supreme Court.

### AZ.
### Federal Powers which are forbidden to the States.

All legislative powers herein granted shall be vested in a Congress. The Congress shall have power to lay and collect . . . duties, . . . to pay the debts and provide for the common defense. To regulate commerce with foreign nations and among the several States, etc.

### A.
### Powers Granted to the United States Simply.

Direct taxes shall be apportioned among the several States, according to their respective numbers. To provide for the punishment of counterfeiting the securities and current coin of the United States, etc.

### AB.
### Powers Common to the Nation and the State.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, . . . nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress, etc.

### B.
### Powers Reserved in the States.

[A State may lay imposts or dutiess absolutely necessary for executing it] inspection laws, etc.

### BX.
### State Powers Forbidden to the United States.

The times, places and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, etc.

### X.
### Powers Forbidden to the United States Simply.

Representations and direct taxes shall be apportioned among the several States according to their respective numbers. The privilege of the writ of habeas corpus shall not be suspended, unless, etc.

### Z.
### Powers Forbidden to the United States Simply.

No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

### ZX.
### Powers Expressly Forbidden to both the Nation and the States.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

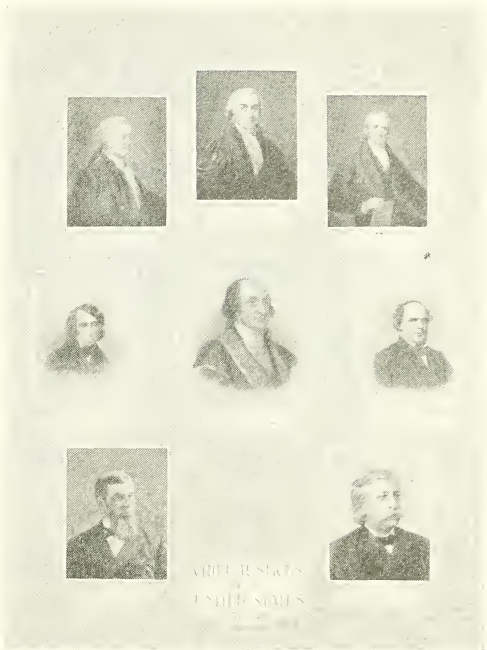
**Y.**

**Rights Reserved or Expressly Retained in the People.**

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. The United States shall guarantee to every State in this Union a republican form of government.

It is not too much to say that if we knew exactly what matters fall within the area **"AZ"** and the corresponding area **"BX"** and the central domain of **"Y,"** we should have the solution of all the **questions** that are vexing both the **constitutional lawyer** and the general public; for these neutral grounds, these contested areas, graphically represent both what is given or denied to the Federal Government, what is reserved to the States, and finally, what has never been parted with by the people.

For a **full discussion** see **Stimson's Federal and State Constitutions.**



Copies of the original of the above group, the design measuring 17½ x 23 inches, on a white "mat" 24 x 30, suitable for framing, can be furnished, rolled in a "carton" for $2.00 each.

### GUILTY OF ARSON.

During a breach of promise case heard in Indiana some time since, the counsel on both sides spoke considerably about the "fire of love," "Cupid's flames," "the burning passion," etc. The jury brought in a verdict that both plaintiff and defendant were guilty of arson, and recommended them both to the mercy of the court.

## THE MODERNIZED BLACKSTONE.

**New Commentaries on the Laws of England (partly founded on Blackstone), by His Honour Judge Stephen. 15th edition. Thoroughly revised and modernized. 4 vols., cloth. Price, $22.00.**

This new edition will be very useful to **American lawyers** and libraries, not only in presenting clearly the **present state** of the whole **English law,** but also in digesting **recent important statutes.** This latest edition of Stephen's Commentaries is indispensable to any library in which modern English law may have to be examined.

The vitality of Blackstone's Commentaries is marvellous. Originally given to the world in 1765–1769, they had passed through nearly thirty editions in England up to the year 1844. Even now, the original commentaries survive in America in Ewell's Essentials of the Law, Vol. 1, which contains that portion of Blackstone which is still good law.

In 1840 the original work had become so overlaid with notes, that Sergeant Stephen, in editing the last regular edition of Blackstone, became convinced that a new work, founded on Blackstone, but freely recast, would be a great desideratum. He therefore devoted himself to the task of rewriting the Commentaries.

The work thus slowly ripened on the Blackstone stock at once superseded the older work, and has since been the standard commentary on English law.

Successive editions of Stephen's Commentaries at intervals of four or five years have kept pace with statutory changes. The end of the year 1908 sees the publication of the fifteenth edition, with notes by fifteen specialists under the editorship of Edward Jenks.

## NOT THE SAME JOSHUA.

"What's your name, prisoner?" asked the judge with the love for biblical lore.

"Mah name's Jashua, jedge," was the reply.

"Joshua, eh?" said the judge as he rubbed his hands. "Joshua, you say? Are you that same Joshua spoken of in Holy Writ—the same Joshua who made the sun stand still?"

"No, jedge," was the hasty answer, "'twarn't me. Ah am de Jashua dat made de moon shine."—*Congressman Clayton of Alabama.*

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**The Law of Arrest in Civil and Criminal Actions.** By **Harvey C. Voorhees.** Cloth, $2.00.

This manual covers with fullness, clearness and accuracy the following very important topics, not elsewhere satisfactorily treated: *The Right of Personal Liberty—The Issuance and Service of Legal Process—Who May Issue a Warrant—What Constitutes an Arrest—Arrest with Warrant—Arrest without a Warrant—Breaking Doors to Make an Arrest—Force in the Act of Arrest—Disposing of the Prisoner—Arrest in Extradition Proceedings—Evidence Necessary to Establish the Offense—Exemption from Arrest—False Imprisonment—Trespass.*

It is the work of a lawyer who found it difficult to get together the law required by a lawyer, or an officer of the law, in making arrests, or in protecting a client from illegal arrest. It is written with simple style and arrangement—but every proposition of law is fortified by citations, so that the treatise can be used with safety in court.

Prosecuting attorneys, lawyers with regular or occasional practice on the criminal side, court officers, sheriffs, and police officers will find **Voorhees on Arrest** very helpful.

# Virginia Colonial Decisions

## DECISIONS OF THE GENERAL COURT
OF THE
## COLONY OF VIRGINIA
## 1728-1743

REPORTED BY SIR JOHN RANDOLPH AND EDWARD BARRADALL
WITH HISTORICAL INTRODUCTION
BY R. T. BARTON OF WINCHESTER, VA.

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THE reports herein first printed were prepared by Randolph and Barradall for their own use, were copied several times (four more or less perfect copies still exist), and were evidently passed around, consulted and quoted by contemporary lawyers. Their story and that of the bench and bar of early Virginia are graphically told in Mr. Barton's introduction.

Preserved as curiosities and relics for more than a hundred and fifty years, the manuscripts now reprinted present the only surviving contemporary records of Virginia litigation, social life and business relations in the first half of the eighteenth century. As such they have acquired great historic interest and value.

BARRADALL'S reports, being more voluminous and of later date, occupy the whole of the second volume. Sir John Randolph's reports are printed in the first volume, together with Mr. Barton's introduction.

This comprises ten chapters: I, "Book," gives an account of the manuscript reports;—II, "Land," sketches the earliest settlements;—III, "People," portrays the character of the early immigration;—IV describes "Government";—V, "Church," shows the relation of church to courts;—VI, "City," traces the growth of Williamsburg;—VII concerns "Education";—VIII deals with "Law and Lawyers";—IX covers the "Courts";—X gives an account of "The Reporters and their Reports."

This introduction, pervaded by the enthusiasm of the antiquarian, the lawyer and the Virginian, is very interesting reading. Taken in connection with the quaint and archaic details of the Reports, it constitutes an important document in American Colonial History.

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***Two Volumes, Bound in Law Buckram, $7.00***

## FOR AFTER-DINNER ORATORS

The fortunate lawyer who is called on for an after-dinner speech, or the ambitious lawyer who wants to make a telling political speech, sometimes even the pleader who wants to put his jury in good humor, must have an apt and telling joke to begin his remarks with. When memory does not work, it is well to have some reservoir of wit to draw from. Such a storehouse is a set of the **Green Bag**. There are hundreds of good stories and legal jokes in every volume. Here is a short list prepared by a friend who has the oratorical fever.

Chase, Chief Justice ..... March, 1906
Choate, Rufus ..... Jan., 1906, Sept., 1906
Continuations ..... May, 1906
Cross-examinations, Art of ..... Sept., 1905
Damages, Domestic ..... March, 1907
Damages *v.* Repairs ..... Jan., 1907
Decision Reserved ..... Sept., 1907
Dementia Americana in 1611 ..... Dec., 1907
Depew, Chauncey ..... Feb., 1905
Dictionary, Lawyers' Revised ..... July, 1907
Divorce, Act of God ..... Nov., 1906
Dog, Mad ..... March, 1905
Evidence, Real ..... Feb, 1906
Examination, Over ..... Feb., 1906
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Judicial Punning ..... Oct., 1906
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Juryman, Obstinate June, 1906, Nov., 1907
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Juvenile Offender ..... June, 1906
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Law, Stage ..... Jan., 1905
Law's Delay Nov., 1905, April, 1907, May, 1907
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Promise, Breach of ..... Dec., 1905
Proof ..... Jan., 1907
Recess, Constructive ..... July, 1905
Sentence, Compound ..... June, 1907
Suit, World's Longest ..... May, 1905

# The Law of the Federal and State Constitutions of the United States

With an Historical Study of their Principles, a Chronological Table of English Social Legislation, and a Comparative Digest of the Constitutions of the Forty-Six States, by FREDERIC JESUP STIMSON.

**CLOTH, $3.50**

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## *BOOK I.*

### Origin and Growth of the American Constitutions

I. Introduction. II. The Right to Law. III. The Right to Liberty. IV. Chancery and the Injunction Order. V. The Right to Labor and Trade. VI. The Right to Property. VII. Other Constitutional Rights. VIII. Rights of Government. IX. Government Organization. X. Federal and State Powers. XI. The State Constitutions.

## *BOOK II.*

### Constitutional Principles as Expressed in the English Statutes of the Realm and American Constitutions

CHAPTER I. Constitutional Principles Protecting Personal Liberties and Private Rights as Expressed in Constitutional Documents from Magna Charta to the United States Constitutions.

I. Liberty. II. Law. III. Property and Trade. IV. Political Rights.

CHAPTER II. Historical Digest of English Social Legislation.

CHAPTER III. Division of National and State Power.

## *BOOK III.*

### The State Constitutions Digested, Annotated and Compared with the Federal Constitution

Part I. Bill of Rights. I. Bill of Rights: Civil. II. Bill of Rights: Criminal. Part II. Political Provisions. Part III. Legislation. Part IV. Judicial System. Part V. Constitutional Amendments.

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## PRESS COMMENTS

No mere dry index, but a well-written analysis for **thoughtful readers.**—*Boston Transcript.*

A most useful work; **indispensable** to every student of American politics.—*Review of Reviews.*

Conducive to a clearer popular understanding of the **constitutional muniments** of liberty.—*Philadelphia North American.*

One of the most **thorough** and **important** contributions to the study of **fundamental laws.**—*Charleston News and Courier.*

Written with **judicial** fairness, admirable clarity and fine **discernment.**—*Chicago Interior.*

# LEGAL BIBLIOGRAPHY

## NEW SERIES

ISSUED QUARTERLY

Vol. IV APRIL, 1910 Number 2

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# Legal Bibliography.

No. 2, Vol. 4, N. S. BOSTON, MASS. April, 1910

## NOTES.

**See Order Blank** enclosed herewith.

**Chance to get Books Cheap.** See last page of cover.

**Check up your library** by the list on pp. 14, 15 and 16 of this number.

**If you don't care for** this number, we beg you to pass it on.

**Send in an advance order** for Schouler on Wills and Administration, so that we will be sure to have enough copies.

**The last volume of** the Full Reprint of English Reports was 103, well along among the King's Bench Reports.

**A Time Saver.** Have you noticed what an excellent compendium of all noteworthy articles in current law periodicals is given now in *The Green Bag?* Whoever reads it can keep abreast of legal thought.

**A Lost Opportunity.** "Our case-law does not compare favorably, as regards its external form, with the case law of England. Judicial decisions in this country are loaded with far too many details and are for the greater part lacking in force and vigor," says Prof. Street of the Missouri Law School.

Lucky the lawyer or library who secured a set of the **Full Reprint of the English Reports** before the few remaining sets were advanced from the special terms first offered to early American subscribers and made equal to the English quotations. Soon they will be entirely out of print and impossible to get.

**A Fair Substitute.** But, if you have missed that chance, you can still get and have right at hand, next to your Century Digest, **Mews' Digest of English Code Law.** Don't put up with half, get the whole range of law.

## SCHOLARLY LAW BOOKS.

To offset the overwhelming output of "practical law books," we are glad to be able to record a gratifying increase in the scholarly literature of the law.

We ourselves have published recently Prof. Thayer's Legal Essays, his last message to the American Bar, and to the thousands of law students who had sat under his teaching at Harvard; also Korkunov's General Theory of Law, translated into English by Prof. Hastings of Nebraska State University; and Mr. Barton's interesting "Virginia Colonial Decisions."

For the Pennsylvania Bar Association and the Pennsylvania Law School we have published an English translation of the new German Civil Code, by Walter Loewy, with an historical introduction by William W. Smithers.

As publishers for the Comparative Law Bureau of the American Bar Association, we have in press an English translation, by S. P. Scott of Hillsboro, Ohio, of the Visigothic Code, the foundation of Spanish law. The Bureau will follow this with an English translation of the new Civil Code of Switzerland, interesting because it is a blend of German, French and Italian law.

We are further informed that a recent bequest will enable the Law School of the University of Pennsylvania to establish graduate fellowships, and to publish in a special series of monographs, the results of the original study and research of its Fellows, under the direction of the Faculty. This is the first instance, we believe, where a Law School has been able to take a step beyond the functions of teaching and utilize its equipment to develop scholarly literature.

## A MODEL TEXT-BOOK.

**Nichols on the Power of Eminent Domain:** a treatise on the Constitutional principles which affect the taking of property for public use.

By Philip Nichols, late Assistant Corporation Counsel of the City of Boston.

One volume, bound in buckram, $5.00.

This new treatise does not deal with procedure, which varies in different states, but with the fundamental principles underlying the doctrine of Eminent Domain, which are the same in all our states

It is written by an author who has had eleven years' official connection with the land-takings of a large city. How practical and satisfactory his work is, the following opinions prove:—

"This book is an **exceptionally good** lawyer's brief on the constitutional law of eminent domain. The style is simple, lucid and connected."—*Illinois Law Review.*

"A concise study. The author's purpose is to condense, and save the reader's time by a systematic statement of principles. . . . It shows independence of judgment."—*Harvard Law Review.*

"Important questions are treated with admirable clearness and candor; conflicting doctrines are impartially summarized."—*American Law Register.*

"Clearly and concisely presented: . . . written in a very satisfactory manner: . . . should be used by every practitioner having work involving Eminent Domain."—*Yale Law Journal.*

"A lucid and logical presentation;—the result of study and comparison of the cases."—*Law Notes.*

"Re-examining principles and their origins in the light of all the judicial decisions:—very illuminating. The text contains few extracts from opinions, but presents very fully their conclusions."—*The Docket.*

"Extracts from opinions of the courts have not been interjected with much frequency; but to make the work of as much service as possible to attorneys who do not have access to all the original reports, citations have been made to unofficial reports and to selected cases."—*From the Author's Preface.*

## THE IDEAL JUDGE.

From the first "title" of **The Visigothic Code,** we take this quaint characterization of the ideal judge.

He should be energetic and clear of speech; certain in opinion; ready in weighing evidence; so that whatever proceeds from the source of the law may at once impress all hearers that it is characterized by neither doubt nor perplexity.

The Judge should be quick of perception; firm of purpose; clear in judgment; lenient in the infliction of penalties; assiduous in the practice of mercy; expeditious in the vindication of the innocent; clement in his treatment of criminals; careful of the rights of the stranger; gentle toward his countrymen. He should be no respecter of persons, and should avoid all appearance of partiality.

All public matters he should approach with patriotism and reverence; those concerning private individuals and domestic controversies he should determine according to his authority and power; so that the community may look up to him as a father, and the lower orders of the people may regard him as a master and a lord.

He should be assiduous in the performance of his duties so that he may be feared by the commonalty to such a degree that none shall hesitate to obey him; and be so just that all would willingly sacrifice their lives in his service; from their attachment to his person and to his office.

Then, also, he should bear in mind that the glory and the majesty of the people consist in the proper interpretation of the laws, and in the manner of their administration. For, as the entire safety of the public depends upon the preservation of the law, he should attempt to amend the statutes of the country rather than the manners of the populace; and remember that there are some who, in controversies, apply the laws according to their will, and in pursuance of private advantage, to such an extent that what should be law to the public is to them private dishonor; so that, by perversion of the law, acts which are illegal are often perpetrated.

## ROSEBERY ON LEGISLATION.

Those who have followed Lord Rosebery's political career will read with interest the following extract from his preface to **The Legislation of the British Empire** (4 vols. cloth, $12.00).

The more important portion of the laws that are passed now are laws of construction—laws aimed at moulding human society in a particular and beneficent direction; and I think, if one school had its way, it would aim still more at constructing a new society on the ruins of the old. But, at any rate, whether we go so far as that or not, we cannot shut out from ourselves the prospect that increasingly the Legislature will endeavor to raise and fortify the new structure of society, somewhat empirically, by means of legislation. Now, I watch this process with some vigilance and more anxiety, because I belong to that small school which does not believe that law, in the long run, can greatly ameliorate humanity. I am not sure that I do not incline to that small heresy (if it be a heresy) that the state is most fortunate which achieves its own development by the character and individual efforts of its own citizens, and with as little support and guidance as possible from legislation. At any rate, certain I am that the progress of the state which is enabled so to develop itself will be more sure and more abundant than that of the state which rests on legislative measures for the achievement of its destiny. If, however, we are constantly engaged in the work of construction, *it surely is of the most vital importance to us to know what other nations are doing in the same direction, how far they have succeeded by their measures, and how far they have failed.* I will take one example—the question of old-age pensions. It is of vast importance to all who have that matter at heart to know what has been done in New Zealand, in Australia, and in Germany. And another case,— acts and ordinances respecting the welfare of children. *It seems as if there were a wave of feeling passing over the world with regard to particular subjects which sweeps legislation along with it.*

## THE VISIGOTHIC CODE.

We have in press, and shall shortly publish (for the Comparative Law Bureau of the American Bar Association) a translation of the **Visigothic Code.** This fountain-head of Spanish law is described in Guy C. Lee's article on the Barbarian Codes, 9 Green Bag 430.

The Visigotho-Roman code of Spain preceded by one hundred years the first purely Visigothic collection of laws of which a manuscript has been discovered. This Visigotho-Roman code was published by Alaric II (483–506) in the first decade of the sixth century. It is cited as the Liber Aniani—from the official countersignature of Anianus the referendary that was attached to each authentic copy—as the Lex Romana Visigothorum or as the Breviarium Alarici, and it is under the last name or rather its anglicized version, the Breviary of Alaric, that we best know this important code. Important because for centuries in western Europe it was the Roman Law, and when that law was cited the reference was to the Breviarium of Alaric and not to the Code of Theodosius. Important because before the discovery of the palimpsest of Verona (1816) we know scarcely anything of the Institute of Gaius or the Sentences of Paulus save from the Breviarium Alarici.

Although the manuscripts of the Romano-Visigothic code antedate the purely Visigothic code, yet the laws contained by the latter were centuries older in usage among the Goths than the Roman laws. But the preservation of these early laws has been such that they have come to us in a series of fragments concerning which unsettled controversies still rage. These fragments have been attributed to the Kings Euric (466–483); Theudis (531–548); Alaric II (483–506); and to Leovigild (570–586).

It is, however, that code attributed to Recceswinth (652–672) which is an enlargement and continuation of the code of Chindaswinth (644–652) that is of the greatest importance to our present inquiry. Chindaswinth and Recceswinth gave a decided forward impetus to the long process of amalgamation between the Goths and the Spanish or descendants of the Roman provincials, when they deprived the Spanish of their Visigotho-Roman law-book, the Breviarium Alarici, and substituted the Liber Judicum or Forum Judicum.

## CONSTITUTIONAL CONSERVATISM.

Mr. Nichols in his excellent treatise on the Power of Eminent Domain ($5.00) says, as to extremes of interpretation:—

In these days of cyclopedias and digests national in scope, few text-books are of real value unless the text serves as more than a series of convenient pegs upon which to hang, no matter how exhaustive, a citation of authorities. The text-writer must attempt a coherent framework, must indulge in some reasoning and may even express his own opinion of "what the law ought to be." No subject better lends itself to such treatment than constitutional law, and none will more repay careful study by all persons interested in the preservation of their own institutions. On the one hand we see the Constitution and its most conscientious expounders bitterly denounced by well-meaning men of many different views, who agree only in decrying "judicial usurpation" when the supreme law of the land is held to stand in the way of their schemes for bettering humanity at the expense of those safeguards against class legislation and interference with individual liberty which have made this country what it is today. On the other hand, we find that in many of those commonwealths which are called, not without reason, most progressive, the courts have assumed or been granted the power to supervise every legislative enactment, and with a veto which really forbids, brand what seems to them merely unwise or unfair as unconstitutional. Between these extremes lies the true function of a written Constitution; and it cannot but gratify any earnest student of constitutional principles to note how steadfastly many of our courts have adhered to the ancient doctrines, how carefully they have restrained themselves from encroaching upon the prerogatives of the Legislature and how firmly they have extended their protection to the unpopular few when their fundamental rights have been threatened with violation by unconstitutional legislation passed in compliance with the outcry of the unthinking many.

## NATIONAL LAW EVOLVED FROM CHAOS.

The difficult task undertaken by the Code Commission of the new German Empire (1874 to 1894) is thus outlined by Mr. Smithers in his very interesting historical introduction to the German Civil Code, translated by Loewy.

These men faced the most unique as well as the most intolerable condition of private law that the world had ever seen. In the centre of Germany was an immense region extending from the central south to the extreme northwest, regulated principally by the common law, that is, the Roman Law as "received" into an infinity of ancient local laws and general customs, city statutes, privileges and royal ordinances. To the north were sections governed by the ancient Jutland code, the Roman Law and the Saxon particular code. To the eastward a vast territory subject to the Prussian Landrecht, combined at divers points with or overridden by provincial laws or new limited codifications. At the west was a diversified country, where within short distances the laws changed from Prussian to Roman and from the latter to French. The Roman Law governed more than sixteen millions of inhabitants; the Prussian, twenty-one millions; the French, seven millions; the Badoise, two millions; the Danish, Frisonian and Jute, four hundred thousand.

Startling anomalies existed. Within a few miles one could find the law of inheritance so different as to give a female no rights in one town, equal rights with other heirs in the next, with heirs of the full and half blood dividing the inheritance in a third town. Here, the law of primogeniture was ancient and unyielding, there it had never existed. Some cities alone had two distinct bodies of private law.

Towards the end of the eighteenth century Germany had consisted of about eighteen hundred separate states, principalities, cities and signiories. It is true that less than four hundred had any appreciable territory, but all had unfettered independent powers for the making and undoing of laws,—customary, feudal, Roman or Canonical. . . .

## THE LAWYER'S OATH A CODE OF ETHICS.

J. H. Benton, Esq., of Boston, in his interesting *brochure* on "The Lawyer's Official Oath and Office" (cloth, $1.50), says:—

Why is any oath required for admission to the practice of the law? No oath is required by law for admission to practise in any other profession, even where qualifications to practise are prescribed or ascertained by examinations required by law, as in the case of physicians. But an official oath has always been required for admission to the practice of the law. Why is it required? What is its significance, and what obligation does it impose?

The significance of the lawyer's oath is that it stamps the lawyer as an officer of the state, with rights, powers and duties as important as those of the Judges of the Courts themselves. When a lawyer is admitted to practice and takes the required oath of office he has as much right to discharge the duties of his office as a representative or senator has to sit and act in the Legislature, or a Governor to exercise the functions of a chief magistrate. He has as much right to appear in Court and be heard for a party to a cause as a Judge has to hear and decide the cause. *A lawyer is not the servant of his client. He is not the servant of the Court.* He is an *officer* of the Court, with all the rights and responsibilities which the character of his office gives and imposes.

He is also an officer for life whose office cannot be taken from him except for cause established by due process of law upon proof, hearing and judicial determination.

. . . . . .

It is therefore of the highest importance that the lawyer's oath should not only be uniform in all our courts, but that it should be so framed as to indicate the duties and responsibilities of those who take it. In short, the lawyer's oath should be a condensed code of legal ethics. And this is what it was in England and in America from the beginning, until by a reaction against the multiplicity of oaths imposed by law and of oaths taken without warrant of law, the lawyer's oath was so changed in form as to be now in most of the State Courts and in all the Federal Courts only a mere obligation to discharge faithfully the duties of the office of an attorney.

. . . . . .

The old oath prescribed in Connecticut in 1708 ran thus:—

"*It is ordeined by this Court and the authoritie thereof*, That no person, except in his own case, shall be admitted to make any plea at the bar, without being first approved of by the court before whom the plea is to be made, nor until he shall take in the said court the following oath, viz.:—

"You shall do no falshood, nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice, but you shall use yourself in the office of an Attorney within the court according to the best of your learning and discretion, and with all good fidelitie, as well to the court as to the client. So help you God."

The modern oath in New York is brief and bare, to wit:—

I do hereby solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York and that I will faithfully discharge the duties of the office of Attorney and Counsellor at Law in the Supreme Court of the State of New York according to the best of my ability.

The Idaho oath is more explicit and satisfactory than either that of Connecticut or New York.

Mr. Benton's little book is a notable contribution to the literature of professional ethics.

## BANISH ALL LAWYERS.

Have you seen "Virginia Colonial Decisions"? If not, look it up, and read Mr. Barton's interesting introduction upon colonial conditions, which might apply to all the early American colonies.

Here is an account of laws against lawyers in the seventeenth century:—

The enactment of such laws was, of course, a fairly good indication of the need of them in the first half of the seventeenth century. There was but little business then for lawyers, of a legitimate character, and they lived more by their practices than upon their practice. "The legal profession," says Mr. Fiske, "was at first held in somewhat low repute, being sometimes recruited by freed men whose careers of rascality as attorneys in England had suddenly ended in penal servitude." Their capacities for mischief were only limited by their opportunities, and the exercise of their talents in this direction made them the subject for many years of most drastic legislation. This was by no means a uniform condition, and after the middle of the seventeenth century, and especially in the first half of the eighteenth century, the profession grew rapidly in importanec and improved in character. Professor John B. Minor thought that the adverse legislation of 1642 and subsequently, was due to jealously between the aristocracy of birth represented by the Assembly and the aristocracy of merit represented by the lawyers. But Mr. Chitwood, who quotes Mr. Minor's views, thought it "more probable that this unfriendly attitude of the ruling class towards the legal fraternity was caused by the lack of ability and character of the early lawyers." The last is doubtless the real reason, but lawyers as a class, in spite of the great political, religious and social influence of the profession, have never been popular with the masses, and consequently proportionately unpopular with the elected representatives.

By the planters, who mainly made up the membership of the General Assembly during the earlier years, it is not to be wondered at that the whole race of lawyers should be regarded with some degree of contempt, even at their best, but the crowd of mere mercenary adventurers who by stirring up litigation for the profit which might be in it, destroyed the peace and good feeling of the country neighborhoods, naturally provoked the utmost efforts for their extermination by whatever means the law could afford.

The poor legislators in their endeavors to find a remedy were between the devil and the deep sea, and so they remained for many years to come, indeed until conditions had begun to better themselves, but not by reason of any of their acts; for, untaught by their experience of the inadequateness of the legislative remedies, they continued to enact and re-enact them from session to session, mending here and there a weak spot and making another, still hoping, no doubt, that they would at last find some plaster that would draw. Finally, apparently as a radical resort, it was, on March 26, 1658. by the Assembly "proposed whether a regulation or a totall ejection of lawyers." On the vote the burgesses said, "An ejection."

## STATES' RIGHTS IN MASSACHUSETTS.

In glancing through "Juridical Extracts" in an interesting old magazine, entitled, **The Carolina Law Repository,** we come across questions submitted to the Justices of the Supreme Judicial Court by the governor of Massachusetts in 1812 (see also the supplement to 8 Mass.), and answers thereto, as given below.

QUESTIONS.

1. Whether the Commanders-in-Chief of the Militia of the several States have a right to determine whether any of the exigencies contemplated by the Constitution of the United States exist, so as to require them to place the Militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him, pursuant to acts of Congress.

2. Whether, when either of the exigencies exist, authorizing the employing of the Militia in the service of the United States, the Militia thus employed, can be lawfully commanded

by any officer but of the Militia, except by the President of the United States. . . .

ANSWERS OF THE JUSTICES.

1. It is the opinion of the undersigned, that this right is vested in the Commander-in-Chief of the Militia of the several States. . . .

2. The Federal Constitution declares that the President shall be the Commander-in-Chief of the Army of the United States. He may undoubtedly exercise this command, by officers of the Army of the United States, by him commissioned according to law. The President is also declared to be the Commander-in-Chief of the Militia of the several States, when called into the actual service of the United States. The officers of the Militia are to be appointed by the States; and the President may exercise his command of the Militia by the officers of the Militia, by the authority of the States duly appointed. But we know of no constitutional provision, authorizing any officer of the Army of the United States to command the Militia, or authorizing any officer of the Militia to command the Army of the United States. The Congress may provide laws for the Militia, when in actual service; but to extend this power to the placing them under the command of an officer, not of the Militia, except the President, would render nugatory the provision that the Militia are to have officers appointed by the States.

The union of the Militia in the actual service of the United States with the troops of the United States, so as to form one army, seems to be a case not provided for or contemplated in the Constitution. It is, therefore, not within our department to determine on whom the command would devolve, in such an emergency, in the absence of the President. Whether one officer, either of the Militia or of the Army of the United States, to be settled according to military rank, should command the whole; whether the corps must be commanded by their respective officers, acting in concert as allied forces, or what other expedient should be adopted, are questions to be answered by others.

## WHY KORKUNOV?

The following extract from Prof. Hastings' preface to his excellent translation of **Korkunov's General Theory of Law** ($3.50) explains how that Russian author now comes before American readers.

In the year 1905 there came into my hands a catalogue of a Paris publisher in which was advertised an International Library of Public Law. The English and American works were excellent selections. My attention was attracted to the fact that these French publishers of "international" books, in whose own country Boistel's work had lately appeared, and where Fouillée and Renouvier were still writing, had taken for their work on General Theory of the Law that of a Russian writer of whom I had never heard. The whole field of English, German, and Italian theorists seemed to be passed by, in thus going outside of France, by these French publishers who were, evidently, seeking the best works in their several departments. The curiosity thus excited resulted in an order for the French version.

It was found to have a preface by Prof. Larnaude of the University of Paris, sketching briefly the development of legal theory in Western Europe and England in late years, and justifying the selection of Prof. Korkunov's work, as representing most fully the tendencies of that development, notwithstanding the "œuvres maîtresses" in France, Germany, England and Belgium, which the Paris professor cited.

The book seems fully to deserve Prof. Larnaude's claim for its originality and clearness, above given. The author's studies and teaching while holding the chair of "Encyclopedia of Law," made him familiar with the writings, ancient and modern, of the theorizers of all nations.

He has at all events given a singularly lucid, though condensed, perhaps lucid because condensed, statement of the various views which have prevailed as to the elements of law and its functions in human society.

# RARE AND INTERESTING LAW BOOKS.

We give a memorandum below of some of the scholarly and notable books which we have received during the last three months, and which we can now offer for sale:—

**Assises de Jerusalem;** ou Recueil des Ouvrages de Jurisprudence composés pendant le XIIe Siécle dans les Royaumes de Jérusalem et de Chypre. Publiées par M. le Comte Bengnot. 2 vols. folio (being part of the series "Recueil des Historiens des Covisades"). A fine clean copy with broad margins, in worn half-sheep binding.

**Barbarorum Leges Antiquæ,** cum Notis et Glossariis (etc.). Collegit . . . F. Paulus Canciani. 5 vols. (bound in 3), folio, Venetus, MDCCLXXXL.

We have a copy of this valuable collection in worn half-sheep binding. The text is fresh, the borders wide, the edges of the leaves only slightly trimmed. The copy was at one time evidently defective, but the missing leaves have been supplied and perfected in carefully written manuscript, by a former owner, whose name is a guarantee of scholarly accuracy.

**Lex Salica:** the ten texts with the Glosses and the Lex Emendata. Synoptically edited by J. H. Hessels. With notes on Frankish words, by H. Kern. Quarto London, 1880.

**Le Leggi Civili,** disposte nel loro Naturale Ordine, opera di G(iovanni) **Domat,** 10 vols. bound in 4, duodecimo, half parchment. Pavia, 1825.

**Corpus Juris Civilis.** Ediderunt Fratres Kriegelu. Impressio septima decima. 3 vols. old cloth binding. Lipsiæ, 1887.

**Recueil des Lois composant le Code Civil,** décrétées en l'an XI, et promulgées par le premier Consul, avec les Discours Rapports et Opinions prononcés, dans le cours de la discussion, tant au Tribunat qu'au Corps Legislatif. [With Projet An 8.] 11 vols. Depot des Lois et des Actes du Gouvernement. A Paris. An XI- 1804.

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**An Abridgement of the Laws in Force** and Use in Her Majesty's Plantations (viz.) of Virginia, Jamaica, Barbadoes, Maryland, New England, New York, Carolina, etc. 16mo, published calf, gilt. London, 1704.

[Was this the order of relative importance of the colonies, in the eyes of London, two hundred years ago?]

**Writs Judiciall,** . . . as now used in the Court of Common Pleas; Collected out of the Learned and Accurate Presidents of Richard Brownlow, Esq., late Prothonotary of the Court of Common Pleas. With forms. 2 vols. in one, small quarto, old calf. London, 1653.

The Reading of that Famous and Learned Gentleman, Robert **Callis,** Esq., upon **the Statute of Sewers,** as delivered in August, 1622. 2d edition enlarged. Small quarto, broken binding. London, 1685.

**Jurisdictions:** or, the Lawful Authority of Courts Leet, Courts Baron, Court of Marshalseys, Court of Pye-powder, and Ancient Demesn; together with the most necessary Learning of Tenures, etc. Written by the Methodically Learned John **Kitchen.** To which is added Brevia Selecta, by Richard Antrobus and Thomas Impey. 5th ed., 18mo, broken calf. London, 1675.

**De Pace Regis et Regni,** viz. A treatise declaring which be the great and generall Offences of the Realme, etc. By Ferdinando **Pulton** of Lincolnes Inne Esquire. Black letter. Folio, shattered old calf binding, 1623. This book is old, and it has a slip of older parchment manuscript re-enforcing the binding at the back; a curious old relic.

**An Abstract of all the Penall Statutes** which be generall, in force and use: . . . ; moreover, the Auctoritie and Duetie of all Justices, Sherifes, etc. Collected by Ferdinando **Pulton.** Black letter. Small quarto, rebound in half calf. Imprinted at London by Deputies of Christopher Barker. Anno 1592.

**Labor Troubles: Picketing.** Full Report of Ward and Lock *v.* National Society of Operative Printers' Assistants, in K. B. (1905); and of the Successful Appeal of the National Society against Justice Darling's decision, heard in the Supreme Court of Judicature (1906); in one volume, pages 506 + 467.

Report of the **Case of** the Trustees of **Dartmouth College** against William H. Woodward, argued in the Superior Court of New Hampshire, Nov., 1817, and on Error in the Supreme Court of the United States, Feb., 1819. Reported by Timothy Farrar. Portsmouth, N. H. [1819].

The original edition, an untrimmed copy, in boards; with bookplate of George Bancroft.

Separate reports (in full) of the trial of **Barratry Cases** are not common. Here is a pamphlet printed in Singapore, 1867. (Queerly paged by "Days" of the trial, 42 + 30 + 36 + 37 + 19 + 9 pages) covering "The Erin Barratry Case; The Queen *v.* Archibald Stewart; Albert Fitztiffin and Robert Simpson Scott. From notes taken by W. F. Ferris."

The result of the trial was the conviction and imprisonment of the captain, mate and owner of the Erin, for the crime of scuttling the ship to get the insurance money.

Elements of the **Logical and Experimental Sciences** considered in their Relation to the Practice of the Law. London, boards, 1835.

Who was the author of this anonymous publication? As he says in the preface, "The present work is entirely without precedents." It is contemporaneous with Dr. Whewell's works, and the title sounds like his titles.

**Life and Letters of Joseph Story,** Associate Justice of the Supreme Court of the United States. Edited by his son, William W. Story. With portrait (slightly spotted). Untrimmed edges, original cloth binding. 2 vols. London, 1851.

**The Court Leet Records of Manchester,** A.D. 1552 to 1686 and 1731 to 1846. 12 vols., with the Constables Accounts of the Manor, 1612–1647 and 1743–1776. 3 vols.; together 15 vols., printed 1884 to 1892; bound handsomely in half white parchment.

The following extract from the Preface explains the jurisdiction of a Court Leet:—

"And I must tell you that these Leets and Law dayes are very ancient Laws, and they were the first Laws that euer were vsed here in England, and they were ordained for two causes; the one was that the King might vnderstand by his steward vpon the view of such persons as appeared before him, how many able men there were within the precinct of euery Lawday (or Court Leet) to doe him seruice in his warres if need should require; for wee most vnderstand that at that time all Leets & Law-dayes were in the Kings hand, and at this day no man can keepe a Law-day, but either by the Kings speciall grant, or else by title of prescription, which first began by the Kings grant: And the other cause was for the administration of Justice to the Inhabitants within the precinct of euery Leet or Law day; for before the beginning of those Leets or Law-dayes, there was no Law vsed, no, nor no Justice ministred but all onely before the King himselfe, and wheresoever hee was, there was the Law vsed, and Justice ministred, and in no place else, and then by reason of the great number of suitors which resorted to the Court for Law and Justice, oftentimes sicknesses & diseases were brought thither, which did indanger the Kings person, and also by reason of the multitude of suits which were there depending, it was long ere matters could bee heard and determined, and very troublesome and chargeable to suitors to repaire so farre and stay so long for Justice; for remedy whereof, this Realme was then diuided into Counties, and so into Hundreds, Ridings, Lathes, Leets, and Wapentakes, which are all one in effect, though they differ in name according to the custome of euery Countrey. And there is no man liuing within this Realm, but he is resident and abiding within the precinct of some one of these, and there hee ought to appeare twice euery yeere, if hee bee not other wise priuiledged by his place or office, and if any wrong bee done vnto any man vnder the value of forty shillings, there hee ought to haue redresse, and not elsewhere." . . .

# DIAGRAM

# OF STATE AND FEDERAL POWER

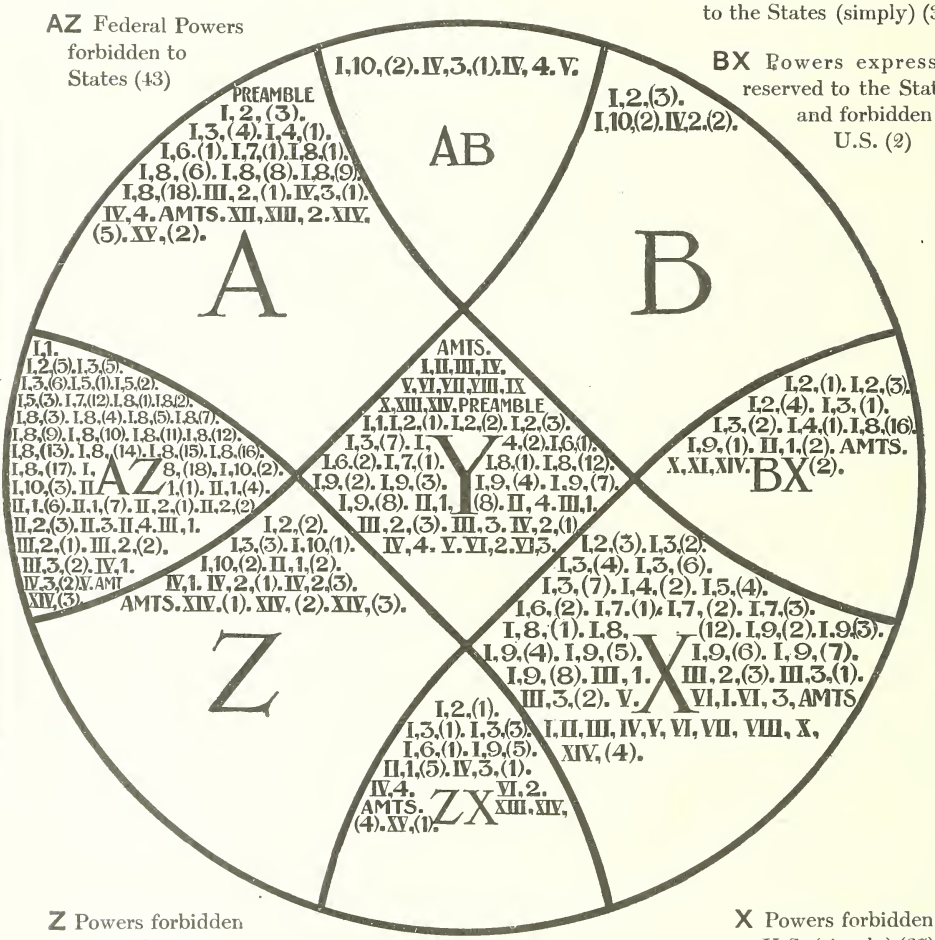
**AB** Federal and State Powers (4)

**A** Federal Powers (17)

**AZ** Federal Powers forbidden to States (43)

**B** Powers expressly reserved to the States (simply) (3)

**BX** Powers expressly reserved to the States and forbidden to U.S. (2)




**Z** Powers forbidden to the States (simply) (11)

**X** Powers forbidden to U.S. (simply) (37)

**Y** Rights or Powers reserved in the People (39)

**ZX** Powers forbidden to both States and U.S. (12)

*See page 108*

***This is not an astrolobe, or a puzzle.***

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# Schouler on Wills and Administration.

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**BOOK I. THE LAW OF WILLS.**

**Part I.**
**Nature and Origin of Testamentary Disposition.**

**Part II. Capacity and Incapacity to Make a Will.**
Testamentary Capacity in General.
Incapacity of Infants.
Incapacity of Married Women.
Incapacity of Insane Persons in General.
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**Appendix.**

## MR. SCHOULER'S PREFACE.

The present volume contains the substance of my two former treatises on "Wills" and "Executors and Administrators." This book is intended to supersede those two, by way of a new edition, so as to supply law students and members of the bench and bar with an elementary treatise for study and practical use, covering the whole jurisprudence of Wills and the Administration of Estates, testate or intestate, in England and the United States. . . . .

Long experience convinces me that legal text-books will continue, as in times past, to fulfil a leading purpose in the education and mental aliment of the legal profession. But now that, with the great multiplication of State jurisdictions in America, and the vastly increasing legal business of communities largely independent of one another, our annual array of court decisions becomes prodigious and almost overwhelming in its general mass, the practitioner must rely much upon the great digests for full citation, and most of all upon his own local digests and local reports in their latest publication. For to every one in active practice the court decisions and statutes most nearly indispensable must be those of one's own State jurisdiction, and chief among these the very latest. Digests, when well classified and arranged, bring headnotes from the reports together; but they do not afford competent or comprehensive instruction. They present points passed upon for a given period, but they do not elucidate principles. Hence the text-book remains needful for professional guidance, to preserve the origin and history of the law, to teach and refresh the mind on elementary principles, and to trace the latest development and progress of the particular topic or branch of jurisprudence. . . . .

But the text-writer should keep to his own sphere. To expect at this day that the legal treatise upon some elementary subject shall compete with the annual digest in supplying the latest citations, English and American, in mechanical completeness—that one must stretch text and notes to the breaking point of enumeration, so as to afford extra pages and volumes of hazy exposition, to the added cost and burden of the profession,—is to expect too much. The author, to be sure, should still study the latest digests and decisions for himself and winnow for his own scholarly presentation of the law; and he should cite sufficiently for illustration; but his chief task remains to keep abreast and keep his reader abreast with the current. At all times he should counsel the consulting student or lawyer to search and examine, besides, whether or not the principles thus presented are modified or altered in his own local code and practice. . . . .

With health and favoring opportunity I have lately condensed and reduced to this new basis one after another of my law treatises. I may consider that, with the issue of this final volume, I have rounded to a close a long and busy professional career, as practitioner at the bar, author and instructor, covering nearly half a century.

229. **To invalidate, therefore, a will on the ground of fraud, compulsion, or undue influence,** such conduct must be of such a character as to destroy the testator's free agency, and substitute for his own another person's will.[1] The undue influence thus exerted amounts at least to a moral coercion, and constrains the testator, through fear, the desire of peace, or some other motive than affection or a sense of duty, to do that which was really against his will.[2] On the other hand, mere honest argument or persuasion, earnest solicitation, and such influence as one person may deservedly obtain over another by kind offices and affection, are as a rule insufficient to affect the validity of a will, in the absence of decisive fraud, even though one should by such means procure a disposition in favor of himself or of some one else whose interest he has maintained.[3] But while any person has the right to fairly persuade a

comparison of the two minds which antagonize. If found sufficient to destroy the testator's free agency in the transaction at issue, it must be pronounced undue even though slight; and conversely, where the testator has resisted the pressure successfully, and acted for himself, there is no undue influence which in any positive sense impairs his will.

[1] Mountain *v.* Bennett, 1 Cox, 355; Marx *v.* McGlynn, 88 N. Y. 357; 43 Penn. St. 46; 45 Ill. 485; Morris *v.* Stokes, 21 Ga. 552; 5 Harring. 469, 60 Am. Dec. 650; Duffield *v.* Morris, 2 Harring. 375; McDaniel *v.* Crosby, 19 Ark. 533; 26 Md. 95; Layman *v.* Conrey, 60 Md. 286; 33 Ala. 611; 15 N. J. Eq. 243; 120 Mo. 252, 25 S. W. 506; Bulger *v.* Ross, 98 Ala 267, 12 So. 803; Schmidt *v.* Schmidt, 47 Minn. 451, 50 N. W. 598; O'Brien's Appeal, 60 A. 880, 100 Me. 156; Bohler *v.* Hicks, 48 S. E. 306, 120 Ga. 800; Stewart *v.* Lyons, 47 S. E. 442, 54 W. Va. 665; Crowson *v.* Crowson, 72 S. W. 1065, 172 Mo. 691; Keegan's Estate, 72 P. 828, 139 Cal. 123; Stull *v.* Stull, 96 N. W. 196, 1 Neb. (unoff.) 380. Thus importunity, in its legal acceptation, here imports such a degree of urgent and incessant soliciting that, under all the circumstances, and considering the testator's condition of mind and body at the time, it should be concluded that he was too weak to resist it, and his disposition could not be deemed the free act of a capable testator. See Kinleside *v.* Harrison, 2 Phillim. 551, 552; 1 Moore P. C 478; 1 Paige, 171; 5 Gill & J. 269, 25 Am. Dec. 282; Baldwin *v.* Parker, 99 Mass. 84. 96 Am. Dec. 697; 63 N. Y. 504; 77 N. Y. 394, 33 Am. Rep. 626; Tawney *v.* Long, 76 Penn. St. 106; 57 Conn. 127; Thompson *v.* Ish. 99 Mo. 160, 12 S. W. 510, 17 Am. St. Rep. 552; 135 Ind 440, 35 N. E. 279.

[2] 1 Hagg. 581; Hall *v.* Hall, 38 Ala. 131; 76 Penn. St. 106; 225 *supra.*

[3] 34 N. Y. 197, 90 Am. Dec. 681; Sutton *v.* Sutton, 5 Harring. 459; 41 Penn. St. 312, 80 Am. Dec. 620; Roe *v.* Taylor, 45 Ill. 485; 99 Mass. 88; Shailer *v.* Bumstead, 99 Mass. 112· 19 Ark. 533; 18 Hun, 403; Hughes *v.* Murtha, 32 N. J. Eq. 288; Yoe *v.* McCord, 74 Ill. 33; Schofield *v.* Walker, 58 Mich. 96, 24 N. W. 624; Trost *v.* Dingler, 118 Penn. St. 259, 4 Am. St. Rep. 593, 12 A. 296; Robinson *v.* Stuart. 73 Tex. 267, 11 S. W. 275; Wilcoxon *v.* Wilcoxon, 165 Ill. 454, 46 N. E. 369; 13 Ark. 474; Kerr *v.* Lunsford, 31 W. Va. 659, 2 L. R. A. 668; 49 Ark. 367, 5 S. W. 590; Pensyl's Will, 157 Penn. St. 465, 27 A. 669. The influence of affection and attachment, such as induces the desire to gratify, is not undue in any legal sense. Williams *v.* Goude, 1 Hagg. 581; 1 Wms. Exrs. 47. To rule to a jury that undue influence is "improper influence" does not express the legal idea. 98 Mo. 433, 11 S. W. 974. Nor do fair and flattering speeches, though abundantly proved, vitiate the will, unless coupled with fraud. 1 Wms. Exrs. 47; 4 Greenl. 220, 16 Am. Dec. 253. Nor even the fact that the arguments or persuasions of the person seeking a chief benefit by the will were indelicate, indecorous, or improper. 17 Barb. 236; Tawney *v.* Long, 76 Penn. St. 106. Nor that such a party passively encouraged the testator's angry resentment towards

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# Legal Bibliography.

No. 3, Vol. 4, N. S. BOSTON, MASS. July, 1910

## THE VISIGOTHIC CODE.

It was well said by Gibbon that "Laws form the most important portion of a nation's history," for from them, more impartially than from any other source, we derive information of the customs, virtues, vices, political ethics, and religious prejudices of a people. Especially is this true of the **Visigothic Code.** In it are depicted the traditions and history of a race which, originally nomadic, with unprecedented rapidity became stationary; and, from being for ages subject to institutions formed by the desultory acts of tumultuous assemblies, in less than two generations acknowledged obedience to a government partly imperial, partly theocratic.

**ANALYSIS.** An analysis of the **Visigothic Code** may be made under three heads: **historical, descriptive, comparative.** Its story is practically that of the Gothic monarchy in Spain. In the scope of its provisions; in the skillful adaptation of its canons to ecclesiastical supremacy; in the care with which it preserves the distinctions of caste; in the conciseness of its maxims defining the principles of equity; in the simple arrangement of its judicial system; in the thoroughly philosophical spirit that pervades its pages; it is radically different from, and, in many respects superior to, all other collections of legal enactments of ancient or mediæval times.

**ORIGIN.** The original Visigothic laws, wholly based upon oral tradition, were first reduced to order and committed to writing by Euric, at Arles, in the latter half of the fifth century. At the beginning of the sixth century, Alaric II promulgated the *Breviarium Alaricianum*, a body of laws compiled mainly from the Codes of Justinian and Theodosius. From these two compilations, between 649 and 652, was formed the *Forum Judicum*, or *Visigothic Code;* the most remarkable monument of legislation which ever emanated from a semi-barbarian people, and the only substantial memorial of greatness bequeathed by the Goths to posterity.

**FEATURES.** In considering the general details of the **Visigothic Code**, one of its striking features is the inculcation of exalted precepts of honor, probity, and justice, and, at the same time, the acceptance of a belief in the basest forms of superstition.

**SOURCES.** It consists of laws emanating from four different sources: *first*, those based on ancient Gothic customs; *second*, such as were adopted from the Roman jurisprudence; *third*, the acts of ecclesiastical councils; *fourth*, edicts of kings, promulgated at different times; all of which seem to have had equal validity. One of its most remarkable characteristics is the maintenance of the principle of legal responsibility. Every precaution was taken to prevent the interference of the sovereign with the magistracy and the tribunals.

**PRECEPTS.** The theocratic principle animating the **Visigothic Code** is conspicuous. The pious and significant maxim, "*Omnis potestas a Deo*," pervades it from beginning to end; in the preambles, which recite the reasons for the enactment of the laws; in the body of the latter, which appeal to Divine sanction for their promulgation; in the penalties, which breathe the ferocious sentiment of the ordinances of the Pentateuch. Founded upon the strict principles of morality which everywhere should control the conduct of mankind, the precepts of the **Visigothic Code** present a strong analogy to those which govern the proceedings of modern judicial tribunals.

**PRESENT FORCE.** The enactments of the **Visigothic Code** have been never entirely abrogated by the legislative powers of Spain, and, as the foundation of the national judicature, many of its precepts still maintain their original force in the legal and ecclesiastical tribunals of the Spanish Peninsula.

**USEFULNESS.**

The Castilian version of the **Visigothic Code,** notwithstanding its coarseness, its ambiguities, and its errors, is still most useful to the philologist and the historian. It displays the beginning and the development of the elegant Spanish idiom, from its origin,full of barbarisms, down to its perfection of today; from the crude and awkward expressions of the chronicle and the missal, to the perspicuous and polished diction of Calderon, Mendoza and Cervantes.

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## EARLY COURTS OF PENNSYLVANIA.

This account of the early courts of Pennsylvania is the outcome of some lectures delivered as an auxiliary course in the Law School of the University of Pennsylvania. Their purpose was to describe briefly the establishment and development of the courts in the colonial period. That our ancestors should have expressed such profound admiration for the common law while deviating so widely from it in practice, must have puzzled many who have not learned to put a true value upon the flights of forensic oratory. History alone supplies the key, and colonial legal history has not received the attention it deserves. The absence of reports, the destruction of many records and the inaccessibility of those that have been preserved, have all contributed to discourage work in a field usually abandoned to the antiquarian. But as American law increases in importance, the story of its obscure beginnings will require careful consideration.

The earliest emigrants, caring little for the common law except those principles associated with Magna Charta, stamped their peculiar notions upon our jurisprudence in a way that the second and more conservative generation of colonists was unable to eradicate. The Revolution, and the constitutional development that followed, concentrated attention on public rather than on private law, which in many of the states has been allowed to develop haphazard, along the lines of least resistance. Before it will be possible to classify and discuss American colonial law in a thorough and scientific manner, much preliminary work must be done in local fields, and, from material so collected, there may be derived finally a rational account of our legal institutions.

It is in this spirit that the following study has been prepared. The original lectures were undertaken, at the suggestion of Dr. William Draper Lewis, Dean of the Law School, and material sought in the records without, at first, a sufficient realization of their lack of coherence. It was found that, while some special topics had been carefully discussed and while others were treated incidentally in works having a different object in view, there was no concise statement of the origin and growth of the courts and their jurisdiction based directly on the statutes and archives of the commonwealth. Such a narrative, it was thought, might prove useful to those who have not found time to become acquainted with the scattered literature of the period described. The treatment is not exhaustive; that would be impossible in a volume of this size; but it is believed that the information contained will be found accurate, as it is based on a careful examination of the public records. While the labor involved was greater than anticipated, the result by no means does justice to a deeply interesting topic.

From the preface to **Lloyd's Early History of the Courts of Pennsylvania,** soon to be published in the Pennsylvania University Law School Series.

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**Japanese Commercial Code,** translated into English with extensive notes and compared with the European Commercial Codes, especially that of Germany. Ready August 1, 1910.

The translator, Mr. Yang, is a graduate student of the Law School working under the direction of Dean Lewis. The object of the notes is: (1) to answer the questions which would naturally occur to a student of the Common Law on reading the text of the Code; (2) to compare the changes which the Japanese have made in the German Commercial Code, on which the Japanese Commercial Code is based. It has been said that it is impossible to read the German Civil Code intelligently without also reading the explanation given by Schuster in his work entitled "Principles of the German Civil Law." In the same way it is impossible for a common law student to get very much out of the mere reading of the text of the Commercial Code. He is constantly asking questions for which he can find no answer. The notes of Mr. Yang are the results of the questions put to him by Dean Lewis in the course of their conferences. The comparison of each section with the corresponding section of the German Commercial Code, and frequent references to variations in the Commercial Codes of France, Belgium, Spain, Italy and Austria, makes the work the first attempt in English to make a comparative study of the Commercial Codes of Civil Law countries.

**Early History of the Courts of Pennsylvania.** By William Henry Lloyd, Fellow in the Law School of the University of Pennsylvania, graduate of the Class of 1893. Ready September 1, 1910.

Mr. Lloyd is an authority on Pennsylvania Colonial Law. The work will be based on the lectures given by him as a member of the Auxiliary Teaching staff of the Law School of the University of Pennsylvania, on the "History of the Courts of Pennsylvania." The subject is divided into chapters on the Common Law courts in the seventeenth and eighteenth centuries and in the nineteenth down to about 1830 when the civil code was revised. There are also chapters on the Development of Equity Jurisdiction; on the Orphans' Court; and on the Laying Out of Highways. The work will combine the solid information collected from the archives and the more technical books on the periods covered with anecdotes of the courts; the thought being to lighten and make interesting a subject that might otherwise be considered by the average lawyer, student, or casual reader, as too dry and musty for consideration. The book will constitute a useful means for enabling one to bridge the gap between the courts as described in Blackstone and as found organized in Colonial and early State times.

**Partnerships—A Study in Theories, Statutes and Cases Appropos of the Proposed Uniform Partnership Act.** By James B. Lichtenberger, Fellow in the Law School of the University of Pennsylvania. Ready September 1, 1910.

Mr. Lichtenberger has been working under the immediate supervision of Dean Lewis. The origin of the work is as stated, the publication in draft form of a proposed Uniform Partnership Act, which act is now under discussion by the Comsioners of Uniform State Laws. The work will contain: (1) a statement of the various theories of partnership. (2) a discussion of the proposed Uniform Partnership Act, which has been drawn on the entity of partnership, from two points of view: how far the act is consistent with the theory on which it is drawn, and the changes which the adoption of the act would produce in the law. (3) the draft of an act drawn on the aggregate theory of partnership; a comparison of this draft with the English Act and the California Act, and a statement of the changes which its adoption would produce in the law.

**Sources of English Law.** By George F. Deiser, Fellow in the Law School of the University of Pennsylvania, a graduate of the Class of 1898. Ready November 1, 1910.

The first part of the work will be devoted to the development of the various form of actions from the Saxon period to the beginning of the Year Books, including the cases in Bracton's Note Book, and a discussion of the system of tenures. The design here, apart from an effort to trace the development of the legal system, will be to exhibit the complicated doctrines of tenures in a reasonably simple form. To aid in this Mr. Deiser will add to each chapter a summary of the doctrines or expositions of Pollock and Maitland, and of Holdsworth. This part of the work also includes a special account of the period of Richard II upon which Mr. Deiser made a personal investigation.

The second part of the work will be devoted to an account of the Year Books including a list of the manuscripts covering, as far as possible, every year of the Year Books. No information of this kind is now extant as Wallace cannot be relied upon.

The book is designed, among other things, for use by those studying for the English Bar, where Pollock and Maitland and Holdsworth are required to be read. Professors and tutors in England have informed Mr. Deiser that the two works mentioned are too abstruse to be comprehended by students.

It should be explained that Mr. Deiser has spent the last four or five years of his life mainly on the translation of the manuscript of the Year Books. He spent last summer in England working up the manuscripts of the reigns of Richard II. and a group of Law School men, at the head of which was the late Mr. Ames, are proposing to select him to translate the Year Books of Richard II.

**Employer's Liability Acts.** By James T. Carey, Fellow in the Law School of the University of Pennsylvania. Ready January 1, 1911.

Mr. Carey has been working under the immediate supervision of Professor Bohlen. The work will treat of the common law liability of employers and the changes affected by the acts as passed in England and the United States. The book is primarily intended to show the development of the law of employer's liability by the statutes. In the notes will be collected the cases interpreting the acts.

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## THE GERMAN CIVIL CODE.

The Civil Code of the German Empire, as enacted on August 18, 1896, with the Introductory Statute enacted on the same date. Translated by Walter Loewy, B.L. (Univ. of Cal.), LL.B. (Univ. of Pa.), Ju.D. (Heidelberg). Translated and published under the auspices of and annotated by a special committee of the Pennsylvania Bar Association and the Law School of the University of Pennsylvania.

**Buckram. Price $5.00.**

The present translation of the German Civil Code, resulted from the appointment by the Pennsylvania Bar Association, in 1895, of a special committee, consisting of Messrs. William Draper Lewis, William W. Smithers, and Charles Wetherill, to consider and report what should be done to forward the study of comparative jurisprudence in the United States. On its report in 1896 the volume was prepared under its supervision and management, in connection with the Law Department of the University of Pennsylvania, by Walter Loewy, Esq., of San Francisco, a graduate of the University of Pennsylvania and of Heidelberg.

During the progress of the translation the destruction of Mr. Loewy's office and library caused an interruption of the work, but the delay made possible the inclusion of many references to Schuster's Principles of German Civil Law, explaining many points which would be obscure to a reader of the mere text of the Code.

The Civil Code proper consists of 2385 sections, and the introductory statute, enacted on the same date, August 18, 1896, contains 218 articles. The main purpose of the latter is to determine the effect of the code on other imperial laws—for the code must be considered in relation to (1) other laws of the empire, (2) the laws of the several states, and (3) the "customary law." A list of 44 important statutes aside from the Civil Code is given. Among these are two other codes—the Commercial Code of May 10, 1897, with its introductory statute, and the Criminal Code of May 15, 1871. Separate statutes relate to land registration, usury, negotiable instruments, patents, the military establishment and many other matters.

The Civil Code applies to the whole empire, by the constitutional provision that "the laws of the empire take precedence over the laws of the several states." Nevertheless, only the private law of the states is superseded, the public law remaining unaffected, and hence, in applying the provisions of the code, it is necessary to distinguish between the private and the public law of a subordinate state, in order to determine whether the state law or the code is to control.

The annotations of the present translation contain copious references to the principal European Codes promulgated since 1794. References are also made to the Spanish-American Codes, the Chinese Penal Code of Shun-chi and the Japanese Civil Code.

The student of comparative jurisprudence will undoubtedly find the work invaluable. The accuracy of the translation and annotation will be presumed from the auspices under which the work is put forth.

From "Law Notes," April, 1910.

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From one of these Thomas Jefferson extracted a few cases which were published in the thin volume known as "Jefferson's Reports." The rest of the cases have never hitherto been printed. To put these prototypes of American reporting into permanent form, the publishers were fortunate to get the State law librarian, W. W. Scott, to transcribe the manuscript, and R. T. Barton of Winchester, Va., to edit and annotate the reports.

Mr. Scott devoted to his part of the work minute care, intelligent criticism and the enthusiasm of an antiquarian. Mr. Barton, one of the leaders of the Virginia bar, was well fitted for the editorial work through familiarity with local law. He had also the enthusiasm of the antiquary, the patience of the historian, and the pride of a Virginian in the early greatness of his state.

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### THE ARRANGEMENT OF THE CONTENTS

PART I. An **introduction.** Short review of the evolution of the commercial law.

PART II. A **bibliographical survey** of the literature most generally in use on the commercial law of the particular country.

PART III. **A chapter on the modes of procedure for the prosecution of legal claims.**

PART IV The **reproduction of the commercial codes** of the particular country, with **supplementary notes and comments** with an English translation.
In countries where the commercial laws are uncodified is a digest of the trade custom law.

PART V **What may be called laws forming a corollary to the commercial code in so far as these have been incorporated in the commercial code in question, are quoted.** The **law relating to Bills of Exchange** is given in full, as well as the **provisions governing commercial bankruptcy.**

PART VI. Other faculties of the law, relating to the commercial code, are referred to in the notes. Excerpts of the more important measures relating to public companies, banking and stock exchange business. Legislation relating to inland navigation and marine insurance. Laws relating to railways, postal and telegraphic services and inland navigation. The laws of private and public maritime codes of importance to trade and commerce. The consular laws.

Notes are appended to those portions of the book which seem to call for them.

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At the end of each several country division a **table of contents** summarizes the whole of the legal material dealt with therein.

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# Legal Bibliography.

No. 4, Vol. 4, N. S. BOSTON, MASS. October, 1910

## THE FEDERALIST.

Notes on the Edition of 1810.

By James D. Bell.

The *Federalist* was originally a New York City newspaper serial publication designed to affect the political struggle in favor of the adoption of the Constitution for the United States. Prior to 1810 three editions of its numbers in book form had appeared in that city—in 1788, 1799 and 1802. The two earlier editions following the policy of the newspaper articles were strictly anonymous and no hint was given as to the identity of the pen-name, "Publius" over which they were written. Between the issue of the first and second New York editions the work had been translated into French and three editions of the translation had appeared at Paris—two in 1792 and the third in 1795. On the title-page and in the *advertisement* of these several editions the authorship of the essays was attributed to Hamilton, Madison and Jay, "Citizens of the State of New York." The edition of 1802 was the last published in Hamilton's lifetime and was revised by him before publication. The editor, John Wells, a famous New York lawyer of the beginning of the nineteenth century, states in the preface that "the work is principally the production of" Hamilton, and that Jay and Madison "contributed some essays. It was at first intended to mark the numbers distinctly which were written by each; but considerations have since occurred which would perhaps render this measure improper." These considerations were doubtless Hamilton's "decided disapprobation" of that course. (Letter of Hopkins, the publisher, in Hamilton's *Federalist*—Hist. Notice, p. xcii.)

The fourth New York edition and the last which appeared in that city, until Dawson's epoch-making book in 1863, was given to the public in 1810. It derives its importance from the facts that it is the first illustrated *Federalist*, the portraits of the authors being included and the first which wholly abandoned anonymity, an author's name accompanying each number.

John Wells was the editor of this edition, as well as that of 1802, and Ford says of the former that "it is identical in matter with" the latter. This does not mean, however, that there is identity of form. The type is larger in the later edition than in the earlier, Nos. 1–46 covering 317 pages of the latter and 368 pages of the former. Even as to "identity of matter" a qualification must be made. Apparently to keep down the size of the last volume, the Constitution and Amendments covering seventeen pages of the earlier edition are omitted from the later, the *Federalist* thus appearing for the first time without the Constitution.

It is well known and universally admitted that the *Federalist* of 1810 was originally published as the second and third volumes of Hamilton's works. It has been claimed, however, that these volumes were published separately, and thus has arisen another of the many puzzles contributed by the *Federalist* to bibliography. When booksellers began to list and sell the *Federalist* volumes of this edition without the accompanying first volume is not known, but the custom has existed for many years. I do not find, however, that any bibliographer prior to Paul L. Ford about twenty-five years ago (Bibliotheca Hamiltonia) claimed that these volumes were a separate edition. In his "Bibliography of the Constitution," revised to June, 1896, and published as an appendix to the second volume of Curtis' "Constitutional History of the United States" (edited by Clayton) after giving its title the work is thus described: "2 vols. 8 vo. pp. iv, 368, 2 portraits,—iv, 368, portrait. A separate edition of volumes ii and iii of the 'Works of Hamilton' as edited by John Wells in 1810." (p. 722). No reason is given for regarding these two volumes as a "separate edition" and nothing occurs to me except the "2 portraits" in volume one, as there is only one portrait in the first volume of the *Federalist* in the works. I do not know what copy Mr. Ford described. He did not have it in his own collection and contrary to his usual custom as to issues prior to Dawson's (1863) he does not refer to any collection in which it may be found. This appears to be a mere assertion, but the assertion of Paul L. Ford is entitled to respect.

In my own collection there are three copies of the *Federalist* of 1810; one of them, the second and third volumes of the Works of Hamilton, and the other two of the so-called separate edition. The first is in the original boards, uncut as issued. The inscription on the paper back is "Hamilton's Works," Vol. I, II, or III, as the case may be. The frontispiece of the first volume is a portrait of Alexander Hamilton, engraved by Leney after the painting by Ames. Near the foot of the print are these words: "New York Publish'd according to act of Congress by Williams & Whiting, Septr. 14, 1810." The title-page is:—

The / works / of / Alexander Hamilton / comprising his most important / Official Reports; / an improved edition of / The *Federalist*, / on the New Constitution written in 1788; / and / Pacificus, / on the proclamation of neutrality, / written in 1793. / In three volumes. / Vol. I. / New York: / Published by Williams &Whiting, / . . . 1810.

On the reverse is the copyright notice signed by "Charles Clinton, Clerk of the District of New York" that on the twenty-first day of September in the thirty-fifth year of the Independence of the United States of America, Williams & Whiting deposited in his office the title of a book, "which they claim as proprietors," namely that above given to and including the "Vol. I."

The preface opens with a eulogy of Alexander Hamilton and the declaration that the publishers "had limited the present work to three volumes;" and then adds: "The first volume comprises the most important Official Reports of that great man, while Secretary of the Treasury." After strongly commending these reports, the author continues: "The second and third volumes contain the *Federalist*. . . . It had been long known that the *Federalist* was not exclusively from the pen of Mr. Hamilton. Mr. Jay and Mr. Madison shared in the labor and the honor of these profound disquisitions. But it was not ascertained with any degree of certainty, which, or how many numbers were written by either of these gentlemen till after the lamented death of Hamilton, when a private memorandum in his own handwriting was found, containing the information which enables the publishers to designate the authors of the several essays: Their names are accordingly prefixed to their respective productions in the body of the work" (p. iv). After stating that five numbers were written by Jay, fourteen by Madison, three by Madison and Hamilton, jointly, and sixty-four by Hamilton alone (this would total eighty-six numbers, though there were never more than eighty-five) the preface continues with about two and one-half pages of quotations from the preface to the edition of 1802 without any indication of their source and winds up with a paragraph beginning: "While Publius and Pacificus serve to keep in just remembrance two very important events in the history of our country, the 'official reports' of the first Secretary of the Treasury will form a sort of *text-book* for his successors through distant ages." It would be difficult to conceive of greater pains being taken to give unity to a work in three volumes.

The frontispiece of the second volume is a portrait of Jay by Leney after Stuart. The volume has two title-pages, the first, the one above given with the substitution of Vol. II for Vol. I. The second is: The / *Federalist*, / on the New Constitution; / written in 1788, / by Mr. Hamilton, Mr. Jay and Mr. Madison. / To which is added / Pacificus, / on the Proclamation of Neutrality; / written in 1793, / by Mr. Hamilton. / A new edition with the names and portraits of the several writers. / In two volumes. / Vol. I / New York: / [All the rest as in the preceding title-page.] On the reverse is the copyright notice to the effect that in the same clerk's office and on the same day by the same proprietors there was deposited the title of a book, and here follows the title last above given to and including "Vol. I."

The frontispiece of the third volume is an engraved portrait of Madison by Leney after Stuart. There are two title-pages precisely as in the second volume with the substitution of Vol. III for Vol. II on the first title-page and Vol. II for Vol. I on the second. There is no copyright notice in the volume, the reverse of both title-pages being blank.

The so-called separate editions differ in size, binding and external appearance from each other and from the collective work. One of them is much smaller than the other. The bindings are apparently contemporary. The taller copy is bound in calf, the back being somewhat elaborately tooled in gold. There does not seem to have been a separate label and the title was in one of the panels, and the volume number in a separate and lower panel. Some one has carefully erased the inscriptions, apparently with pumice stone. On the back, however, of the first

# LEGAL BIBLIOGRAPHY, N.S.

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## THE USE OF TEXT-BOOKS.

Mr. Schouler, in the Preface to the new edition of his book on Wills and Administration, makes some very sensible remarks on the continued use of text-books, notwithstanding that this seems to be the age of encyclopedias and digests. (See page 8.)

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## THE FEDERALIST—(*contiuued*)

volume of the *Federalist* can yet be seen "II," showing that it was originally the second volume. The other copy is in plain calf binding with the leaves trimmed close. It has a separate printed label on the back inscribed "Hamilton's Works," but some careful person has removed with the point of a knife blade or an eraser the volume numbers which were originally on the backs of the several volumes. On the inside the evidences that a title-page has been removed from each volume of each copy are plain. The remaining title-pages are those of the *Federalist* above given. The frontispieces differ. In the taller copy they are identical with those in the collective work, while in the other the portrait of Madison is the frontispiece of the first volume of the *Federalist* and that of Jay of the second volume. It is unnecessary to add that neither of these copies constitute a separate edition of the *Federalist* of 1810.

Mr. Charles C. Soule of Boston, a learned and painstaking bibliographer, to whom I am greatly indebted for assistance in making my collection of the *Federalist*, recently offered to me as a separate edition of the *Federalist* of 1810, two volumes from which the title-pages of (presumably) the collective work had been removed. In returning the volumes to him I made some remarks, and Mr. Soule in his reply states his conclusion to be from the available history of those volumes as well as all other bibliographical data at hand: "That the publishers in 1810 issued their work in two forms—one in three volumes; the other in two volumes, and sold a few of the *Federalist* in the latter form. I do not see why they made complete separate title-pages for the *Federalist* unless they intended to do this. The cutting-out of the full title is clumsy, as you say, but I think it was done by the publishers themselves, and not by anyone else, either then or subsequently. If there was much demand at that time for a separate edition of the *Federalist*, it would have been a characteristic bookseller's dodge to issue the 'works' in three volumes as a subscription set, and then bind up some of the *Federalist*, in two volumes, to sell through the book trade."

As tending to sustain Mr. Soule's suggestion of "two forms," it is a well-known fact that the collective work in three volumes is much scarcer than the *Federalist* part of it in two volumes. Of recent years I have only known of one copy of the former offered for sale, while many copies of the latter have been so

offered. Whatever the cause, the "text-book" for Secretaries of the Treasury commended in the preface did not appeal to the public and perhaps has been broken up by collectors to obtain Leney's portrait of Hamilton, while the *Federalist* was the only saleable portion of "Hamilton's Works." Against Mr. Soule's theory, however, must be placed these facts.

1. That there is no known copy of the work as originally issued which does not present on examination proofs that it formed part of the collective edition. As has been seen, my own copies bear witness to that fact, as did the copy offered by Mr. Soule. I have had considerable correspondence with booksellers about this edition and all the information received from them tends to the same result. Hopkins, the publisher of the *Federalist*, of 1802, who was well acquainted with the circumstances attending the production of the edition of 1810 states distinctly that the latter work was in three volumes. (Hamilton's *Federalist*, Hist. Notice, p. xcii.) Benjamin Rush in writing to Dawson in 1863 describes the *Federalist* of 1810, which belonged to his father, Richard Rush, at least as early as 1816, and in which Madison had designated in his own hand by their initials the authors of the several numbers, as "forming a part of the Works of Alexander Hamilton in three volumes." (Introduction, p. xli.) Dawson also had in his own collection the *Federalist* of that year constituting the second and third volumes of "Hamilton's Works" (*id.*, p. lxxiv). Mr. Soule in his letter quotes from the February, 1810, number of the *Boston Monthly Anthology* (p. 146), the announcement of the book many months before its appearance as follows: "Williams & Whiting of New York propose to publish by subscription the *Federalist* together with an additional volume selected from the writings of General Hamilton." This does not indicate a separate edition of the *Federalist*.

2. The two title-pages it seems to me arose from the fact that the *Federalist* was well known for the preceding twenty years, as a separate publication, and the fact that the two title-pages or traces of them have been found in every known copy tends to sustain this conclusion. When the *Federalist* was bodily appropriated for "Hamilton's Works" in the Lodge edition of 1886, in nine volumes, no separate title-page appeared, but in 1904 when that work was reproduced in twelve volumes a half title-page was inserted containing the title of the work and the names of the authors. The only reason for the insertion occurring to me is to obviate, in part at least, the impropriety of boldly presenting among the works of one man the joint product of himself and two others. The considerations operating on Mr. Lodge in 1904 may well be regarded as having controlled the less enlightened Wells in 1810. Mr. Soule knows the "tricks of the trade," and I would unhesitatingly accept his exposure of the dodges of the booksellers. But how can a bookseller's dodge explain the insertion of the title-page of the collective work when the bookseller intended to issue a separate edition? He could have omitted the superfluous title-page when binding. The additional title-page defeated the very purpose that the bookseller's dodge intended to effect, while cutting it out was a most disreputable trick, which only partly repaired the blunder—if it was one, of originally inserting it.

3. The absence of the portrait of Hamilton from the volumes containing the *Federalist* seems absolutely fatal to the claim for a separate edition. He was declared to be the principal author by the editor of the work, a special feature of which was the portraits of the authors. Why, therefore, should the portrait of the principal author be excluded? The collective work covers this point admirably. The portrait of one of the three authors is the frontispiece of one of the three volumes. The copy in two volumes described by Ford is the only one of which I have ever heard containing the three portraits. As has been pointed out above there is nothing to show the history of this copy or that it was in the original or contemporary binding. Any one now having the collective work can make up a *Federalist* from it containing the three portraits and excluding the title-pages of the collective work. It would meet every requirement of a separate edition, except that of contemporary binding. It would not be a separate edition, however much it looked like one. But even now no one would bind in an unnecessary title-page under the given conditions so that he would have to cut it out afterwards.

To sum up there is no known copy of the *Federalist* of 1810 in contemporary binding which has not the two title-pages or traces of their removal after binding, and no known copy in such binding which has not on its back either the continuous volume number or

traces that it has been designedly removed. There is no known copy of the *Federalist* of 1810 (in two volumes) in contemporary binding having the three portraits. Moreover, the preface explicitly states that the work is in three volumes, the second and third of which contain the *Federalist* and explains its new and distinguishing feature of designating the author of each number, a feature to which no reference is elsewhere made.

After careful consideration my conclusion is that at the present time there is no evidence that there was a separate edition of the *Federalist* of 1810; that that work always formed a part of the works of Alexander Hamilton in three volumes, as Dawson, Sabin and Lodge have declared; and that owing to the presence of Hamilton's portrait and the contents of the preface the first volume is a necessary part of the set.

For the first time the *Federalist* of 1810 distributed the authorship of the several numbers among the three authors. The only authority for so doing is stated in the preface to be a private memorandum of Hamilton found after his death. The contents of the memorandum are not given beyond the mere statement above quoted showing the aggregate numbers of each author, but not indicating the specific numbers allotted to him. The aggregate, as has been pointed out, is eighty-six numbers, instead of eighty-five.

On examining the text of the *Federalist*, two of my copies—that in the collective works and the smaller of the two remaining copies—designate Jay as the author of only four numbers from 2 to 5, both inclusive. And Hamilton is, therefore, credited with sixty-four numbers. The remaining copy credits Jay with five numbers, 2 to 5 and 54. It is well known that Hamilton's (Benson) memorandum allots Jay five numbers, 2 to 5 and 54. In my copies of the *Federalist* in which Hamilton is credited with fifty-four, there is a note on the last page of the last volume immediately below the close of the text of "Pacificus," and above a scroll with word "finis" reading as follows: "ERROR. — Page 50, No. LIV of the Federalist, read Mr. JAY, instead of Mr. HAMILTON, as the author." (Vol. III [II], p. 368.)

At least two of the recent and most distinguished editors of the *Federalist* have fallen into error regarding the subject-matter of this note. After referring to the publication in the *Portfolio* in 1807 of the Hamilton list giving No. 54 to Jay, and its allotment to Hamilton in the edition of 1810, Lodge says: "This difference would indicate either that the *Portfolio* list was wrongly given, or that the editor of the 1810 edition had some list of which nothing is now known. . . . All the Hamilton lists agree, except as to No. 54 which the edition of 1810 gives to Hamilton." (*Federalist*—Introduction, pp. xxvii, xxix.) Ford, writing many years later, puts the matter more emphatically: "One fact of interest in this edition [1810] is that it gives Hamilton as the author of No. 54, thus showing that there was a list 'in his own handwriting' in existence at that time, which corrected the obvious error he made in the Benson list." (*Federalist*—Introduction, p. xxxii, n. 1.)

How baseless these statements are, the reader has seen. The editor and the publishers of the *Federalist* of 1810 corrected many of the copies of that edition so as to allot No. 54 to Jay and in many, if not in all, of those uncorrected, printed a note in the volume containing "the error," asking the reader to make the correction. I have been unable after a very extended search to find a copy of this edition which remained uncorrected or which did not have the error note in it. It is possible that the copies used by Lodge and Ford were uncorrected and without the note, but the fact that the note itself is not on a separate sheet or slip but printed as part of the text would seem to negative that conclusion. In any event Lodge and Ford could only have made this blunder through inexcusable inattention, as they had before them Warner's editions of 1817 and 1818 (reprinted under the copyright of the 1810 edition) in which Jay was given as the author of No. 54 and copies of the latter edition with the erratum or the correction were easily accessible.

Two states of the edition of 1810 are known. The first that in which Hamilton is designated in print as the author of No. 54 with the erratum calling attention to that fact and asking that the change be made to Jay; and second, that in which the alleged error is corrected and Jay appears in print as the author of No. 54, in which case the erratum is omitted. Should it turn out that there are other copies of the edition in which the so-called error as to the authorship of No. 54 is uncorrected, and where there is no note calling attention to it, a third state of the edition would be disclosed. If at any future time a

separate edition of the *Federalist* of 1810 should come to light a fourth state of that edition would not be disclosed, but another edition would have to be added to the twenty-three now known to have appeared prior to 1863.

The influence of the edition of 1810 upon the after history of the *Federalist*, which has been of very considerable extent although scantily recognized heretofore, may be summarized as follows:—

1. The plan of designating an author for each number and printing his name therewith has been followed in every edition or issue of the *Federalist* for the last century, with the exception of the editions of Dawson, which remain wholly anonymous, and the edition in "The World's Great Classics," where the allotment of authors is given in the table of contents.

2. The designation of the authors of the several numbers in this edition is followed without change in Warner's Philadelphia, single volume editions of 1817 and 1818; in the Portuguese translation of 1840 and in "The World's Great Classics" 1901 *Federalist*. That designation, with the substitution of Hamilton for Jay as the author of No. 54 and Jay for Hamilton as the author of No. 64 has been followed in J. C. Hamilton's numerous editions, and in the editions of E. H. Scott (Chicago: 1894; 1898 and 1902).

3. The text has been followed exactly in the editions of Warner and of Scott, and has been followed in part in Hamilton's *Federalist* (Hist. Notice, p. xci). I have a suspicion that the Portuguese translation was made from this text, but without further investigation I would not venture to make the positive assertion.

4. The plan of illustrating the *Federalist* has not been followed very extensively. Warner's editions give the three portraits from the identical plates—Hamilton as the frontispiece, Madison opposite No. 14 (p. 70) and Jay opposite No. 54 (p. 294). The Dawson editions with the Introduction have Hamilton's portrait as the frontispiece. His University editions, however, omit the portrait, as well as the Introduction. All the Hamilton editions have Hamilton's portrait as a frontispiece. The *Federalist* in "Universal Classics Library," has portraits of the three authors. The *Federalist* in "The World's Great Classics," has three illustrations which have nothing to do with either the authors or the subject matter. The portrait of Madison is the frontispiece of volume eleven and that of Hamilton of volume twelve, in the reissue of Lodge's "Hamilton's Works" in 1904. A portrait of Jay does not seem to have been included. I know of no other edition of the *Federalist* with illustrations.

5. The precedent of regarding the whole *Federalist* as a part of Hamilton's Works has been followed by Henry Cabot Lodge alone in the elapsed century. His fusion of the two is much more thoroughgoing and complete than that of his predecessor. In his 1886 edition of "Hamilton's Works," the running title of the left-hand page of his ninth volume is "Hamilton's Works," and of the right-hand page "The Federalist," while in the reissue of 1904 the running title of the left-hand page of his eleventh and twelfth volumes is "Alexander Hamilton," that of the right-hand page remaining "The Federalist" as in the earlier edition. In either case, a person unacquainted with the subject and cursorily examining the work would regard the *Federalist* as the literary production of Hamilton alone. This precedent has not been followed in the publication of "Madison's Works." In Jay's "Correspondence and Public Papers" only the numbers of the *Federalist* written by him are given (Vol. III, pp. 260–294). John C. Hamilton repudiates in express terms the precedent saying in substance that the *Federalist* is, and ought to be regarded as, the joint work of the three authors (Hamilton's *Federalist*, Hist. Notice, p. ciii); and he accordingly published his *Federalist* separate from his father's works. I leave this topic with the remark that the discussion of its ethics is reserved for another occasion.

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## THE VALUE OF OLD CODES.

In most European countries, and even in our own country, the principles of law can be traced back to the Roman Law or earlier, or to the barbarian codes and early codes of the European countries, from which the law has descended to us.

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Vol. IV JANUARY, 1911 Number 5

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SEE PAGE 4

# Legal Bibliography.

No. 5, Vol. 4, N. S. BOSTON, MASS. January, 1911

## EDITIONS OF BLACKSTONE.

In 15 Leg. Bib. N. S. (Jan., 1903), we published a tentative bibliography of Blackstone's Commentaries, giving dates of all the editions mentioned in the catalogues and bibliographies accessible to us.

As the bare list of editions and dates in that list filled four columns, there was no space at the time for comment. Many interesting facts have since come to light, in which our readers may be interested.

In what we have here to say, we assume that they have before them the 1903 list and also the Preface to Hammond's Edition of Blackstone, which gives a bibliography not so complete, but more in detail, so far as it goes.

Blackstone himself, in the preface to his first edition, says that "his original plan took its rise in the year 1753." It was November 6, 1753, that he delivered his first lecture at Oxford, "for the promotion of the Study of the Law." This private undertaking was greatly promoted by the will of Mr. Viner, who died in 1756 leaving all the proceeds of his "Abridgment" for the foundation of the Vinerian professorship at Oxford, to which Blackstone was appointed, thus getting motive and leisure for the studies and lectures which led up to the commentaries. It is interesting in this connection to note that Viner produced the first edition of his monumental "Abridgment of the English Law" at his own home and his own expense, printing it there on specially made paper with his own watermark.

The first publication leading up to Blackstone's Commentaries was his "Analysis of the Laws of England" issued in 1756 anonymously, but afterwards acknowledged by the author. Of this foreshadowing tract, six editions were published, five before the appearance of the Commentaries, one later.

In 1765, twelve years after his opening lecture and nine after his tentative Analysis, Book I of the Commentaries was issued in a large quarto volume, with fair page and broad margins, at the Clarendon Press, Oxford. The date of the preface was November 2, 1765. Book II followed the next year, together with a second edition of Book I. Two years later, in 1768, Book III was published, with which came a third edition of Book I and a third also of Book II, a second edition of the latter having appeared in the meanwhile, in 1767. No second or third edition of Book III was issued. Book IV came out first in 1769. No second or third edition of this volume was ever issued. A collection of first editions would therefore bear date 1765, 1766, 1768, 1769, though many old quarto sets are found, including with the first editions of Book III and IV, second or third editions of Books I and II.

In 1770 all four volumes were issued together, called the fourth edition.

Before the union of England and Ireland, the English copyright laws did not hold in Ireland. Enterprising publishers in Dublin seized on chances to reproduce popular English books for profit, usually in very inferior style, and by the year 1771 the success of the Commentaries had become so great that they were "pirated" in Dublin in small octavo form as the fourth edition.

This imitation evidently annoyed the English publishers, but its octavo form apparently suggested convenience of handling, for the fifth edition, appearing at Oxford in 1773, was octavo.

The sixth edition was published in London by Strahan in quarto form, followed in octavo again at Oxford by the seventh and eighth.

Then, after the issue of the eighth edition at Oxford, came a *sixth* edition in London, printed "by his Majesty's Law Printers," not for Strahan but for rival publishers. Why sixth is not explained, and is not evident. The numeration was ignored in subsequent editions. This is the first puzzle of the bibliography.

The ninth edition known as Burn's, "with the last corrections of the author," was published in London in 1783, as were all later English editions. It was the first annotated edition, though the notes were very meagre. It was "printed for" W. Strahan and others. Strahan's editions were apparently the regular series through the perplexing rivalries which followed.

The English copyright, inoperative in Ireland, appears to have elapsed early in England. In 1786, a tenth edition, anonymous and without notes, in mean little volumes, appeared in London with an imprint of rival publishers, not the same, however, with those of the rival sixth edition. In the next year, 1787, came a tenth edition again, this time in the regular series published by Strahan, edited by Burns and Williams, but showing no signs as yet of the incubus of notes which was to come. The eleventh edition in 1791 was much the same.

With the twelfth edition of the regular series, 1793–5, came a change. Christian, lecturer on the Laws of England at Cambridge, at first intending, as he says in his preface, not only to add notes but to supplement Blackstone in a fifth volume, was persuaded by his publishers to make the notes only for an edition to be published in parts, each illustrated by the portrait of a distinguished lawyer. The preface to the edition states that "the pages of the former editions are preserved in the margin," but Sir Frederick Pollock says in the Law Quarterly Review, October, 1906 (Vol. 22, p. 356), that this is incorrect, through the gradual dislocation of the earlier pagination by the insertion of footnotes, and that owners of editions earlier than the tenth cannot safely use their copies for the purpose of making references.

During this period several pirated editions appeared in Dublin, ceasing with the Union in 1799, only to be succeeded by piracies in America, of which more may be said in another article.

The thirteen portraits were repeated in the thirteenth edition in 1800. The fourteenth and fifteenth editions of the regular series appeared rapidly, in 1803 and 1809. In 1811 came Reed's rival "new edition" without number, edited by Archbold, and in 1813 a small anonymous edition of the Commentaries in Bell's "Legal Classics" series, calling itself a "pure and classical edition," with "a copious index, digested upon an entirely new plan."

Here occurs a jar upon the regular sequence of editions, for the next one to appear (the last numbered edition having been the fifteenth), seems to have been Sweet's eighteenth edition, with notes by Williams, 1821–2. This edition was printed again, apparently from the same plates though with different publishers, in 1823.

Then the sixteenth edition was brought out in the regular series in 1825 by Strahan, who evidently ignored all rivals. This time the notes were by John Taylor Coleridge. The volumes were issued in irregular order, the third coming first and the first last.

In 1826 a "new edition," not numbered, appeared with notes by Chitty, fathered by a group of publishers not in the regular succession. Was this treated as the seventeenth edition, which does not elsewhere appear? Whoever has a copy of what law catalogues mention as "Petersdorff's Supplement to Vol. 3 of the seventeenth edition," may be able by inspection to answer this query.

Sweet, the new publisher, here comes in with another eighteenth edition, edited by Lee and others, 1829; whereupon, in 1830, other publishers bring out a seventeenth edition with Christian's notes again, enlarged and continued by the editor of Warton's "History of English Poetry," whoever he may have been.

Sweet, having got well into the running by now, published in 1836 the nineteenth edition by Hovenden; but five years later another publisher, Spettigue, brings out the twentieth edition with notes by Stewart. The date of the full edition is 1841, although the different volumes appeared separately in 1839, 1840 and 1841. Stewart's second edition followed in 1844 and a twenty-third edition of Blackstone by Stewart in 1854.

Kerr's Blackstone appeared first in 1857, Stephen's Commentaries, a phase of Blackstone with the editor looming larger than the author, began in 1841, and still hold the market. There have been various other successors or adaptations, but the numbered series of editions of Blackstone's Commentaries ceased with the twenty-third.

In the April Leg. Bib. we hope to give an enumeration of the various portraits of Blackstone which have appeared in editions of his Commentaries.

CHARLES C. SOULE.

# LEGAL BIBLIOGRAPHY, N.S.

VOL. IV OCTOBER, 1910 No. 4

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[Seal] Secretary of State.

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CONTENTS.

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One of the most interesting of law books is the Scotch classic "Regiam Majestatem." It is well described in a sub-title, as

"Auld Lawes and Constitutions of Scotland. Faithfullie collected furth of the Register, and other auld authentick Bukes, fra the Dayes of King Malcolme the Second, untill the Time of King James the First, of gude Memorie; and trewlie corrected in Sundry Faults and Errours, committed be ignorant Writers, And translated out of Latine in Scottish Language, to the Use and Knawledge of all the Subjects, within this Realme; with one large Table, Be Sir John Skene of Curriehill. Quereto are ajoined, Twa Treatises." Editions in 1609 and in 1774, quarto.

The preface, beginning, "It is certaine and manifest to all wise men, that there is na thing mair necessar, or profitable to all kingdomes, common-wealthes, cities, and to all assemblies of people leivand together in ane societie; then godlie and gude lawes, knawen to the people, swa that they can pretend na ignorance thereof;" goes on to say, that the "subtill cautellis, . . . quha were called kirkmen" had "caused all the lawes to be conceaved, formed and published in the Latine tongue . . . to continew the people in ignorance, quhilk is ane great pillar of their kingdom;" but that James the Saxt had commanded "the auld lawes to be sighted, corrected, and collected in ane buke."

Skene quotes certain enacting clauses to prove the laws "authentick," and concludes "Quhat I have done, I remit to thy judgment and censure. I have travelled meikill, ane long time. . . . I am the first that ever travelled in this water, and therefore am subject to the reprehension of many quha sall follow after me, quhom I request maist friendly to take in gude parte all my doings."

The Regiam Majestatem is one of the books about which controversies have raged. Regarded as genuine by many, it is denounced by others as spurious. It has been held that Glanville was copied from the Regiam Majestatem. It has also been held that the Regiam was copied from Glanville, in a cunning attempt to Anglicise the Scottish law. Whichever way belief tends, the inherent interest of the volume is sure.

There is an edition in Latin besides this translation "in Scottish language."

A sample of the law in Regiam Majestatem is this Chapter *Of Pactions*. "Paction is the consent of twa persons or moe anent the giving and receiving of ane thing. (2) Ane paction is nocht quhen ane consent is given anent ane thing quhilk is trew, or quhilk is false: for, gif twa or more persons consent to this false proposition, William is an oxe; or to this true proposition, William is ane man; sic consent is nocht ane paction, non anie way obligatour; for neither of the parties is oblissed to other be sic ane consent (3) And quhere I said that paction is the consent of twa or moe persons, thereby paction is different fra pollicitation, quhilk is ane hecht or promise of ane person onely. (4) Paction is driven and hes the name fra *pax* and *actus* (that is, from ane action or deid of peace) for they quha makes pactions haveand divers opinions and contrarious motions of minds, after divers and many strifes and conten-

tions, peaceablie convenes and agries in ane constant will and uniforme sentence. (5) Or, paction is driven fra percussion, or striking together of hands; for in auld times, in contracting of obligations, the use was to shaik hands, in signe and taken that faith and trueth sould be keiped by the makers of the paction."

"Item, There is twa kinds of pactions, some are profitable (lawful) and others are unprofitabill (unlawful).

"(2) Profitabill are they, quhilk are not unprofitabill."

After this somewhat obvious statement, subsequent paragraphs are mainly devoted to unprofitabill pactions, ending with "Ane paction quhilk is filthie, or is impossibill, is in no waies obligatour."

"We decerne and ordeine all pactions to be keiped, quhilks are nocht to the detriment or hurt of the saull."

Thus far the law of contract. The "Burrow Lawes," the "Forest Lawes," and others, are of great interest. "The Statutes of the Gild" and the "Chamberlane Air" are elementary statements of the Law Merchant in its incipiency, before it had grown into the thirty-five solid volumes of the "Commercial Laws of the World" just announced for publication in this country.

We have at present a fair copy of this old quarto volume of Regiam Majestatem, which we would be willing to part with for the sum of ten dollars.

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## PRINCIPAL AMERICAN LAW TREATISES.

**Published during 1910.**

In the January issue of the **Leg. Bib.** we unintentionally omitted several important treatises. The editor trusts that by listing such omitted items in this issue no injustice will be done.

| | |
|---|---|
| **Brannan's Negotiable Instruments Law.** 2d. ed. | $ 3.50 |
| **Loveland's Appellate Jurisdiction of the Federal Courts.** Buckram | 6.50 |
| **Merwine's Judicial Conveyance of Real Estate.** Buckram | 6.00 |
| **Thornton's Federal Employers Liability Act.** Buckram | 4.50 |
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| **Woollen & Thornton on Intoxicating Liquors.** 2 vols. Buckram | 13.50 |

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## ENGLISH REPORTS.

### Editions de Luxe.

Law books are generally not things of beauty. There is nothing particularly gratifying to the esthetic department of the human organism in the conventional typography and sheepskin.

In most marked contrast to even the very best of our books, are a series of law books that have been issued in London. They are reprints of some of the scarcest of the Old English Reports, and in them mechanical execution would delight the heart of Aldus Manutius, Thuanus, or any other admirer of elegant editions. The black letter type of the originals is faithfully reproduced, the curious old style spelling and interchange of letters have been closely followed, while the rich antique calf covers are superior to anything that served to encase the originals reports. These editions have been carefully prepared, and some of the volumes have been enriched with notes added in MS. to some copy of the original by its learned owner generations ago.

I. **Bellewe's Cases Temp. Richard II.** This book has the following title: "Les Ans Du Roy Richard Le Second Collect' Ensembl' hors de les Abridgments de Statham, Fitzherbert et Brooke per Richard Bellewe de Lincolns Inne, 1585. At London, Imprinted by Robert Robinson dwelling in Fewter lane, neere Holborne."

Of Richard Bellewe very little is known save that he was a member of an Irish family, and was admitted into the Society of Lincoln's Inn, 5th June, 1575. That Bellewe was a diligent student is evidenced by his collection of Brooke's "New Cases," temp. Henry VIII., and this volume, which has been designated the Year-Book of Richard II.

London. 1869. Full antique calf, cracked ..... $10.00

II. **Choyce Cases in Chancery.** The first half of the volume is devoted to "The Practice of the High Court of Chancery Unfolded" and the "Choyce Cases" fill the last half. There are two editions of "Choyce Cases"; the first dated 1652, in which "The Practice Unfolded" ends at p. 100. There is then a break in the paging, "Choyce Cases" beginning at p. 113 and ending at p. 188. In the 1672 edition the "Choyce Cases" begin at p. 105 and end at p. 180. Like Lombard, Tothill, and a few similar law works, this volume is one which those great cases that occur from time to time and stimulate inquiry into the very foundations of legal science, will occasionally call forth.

London. 1870. Full antique calf..... $7.50

III. **Cunningham's Reports.** Reports of Cases argued and adjudged in the Court of King's Bench in the 7th, 8th, 9th and 10th years of King George the Second, during which time the Right Honorable the Earl of Hardwicke was Lord Chief Justice of that Court. Not the least valuable and interesting portion of this volume, independent of the value attaching to many of the reported cases, is that devoted to "A Proposal for rendering the Laws of England Clear and Certain" — a unique and instructive chapter on law report-

ing, and in behalf of an authorized body of Reporters. After a hasty glance at the Civil Law, and the Institutes, Digests and Code of the Romans, the author gives a rapid history of the English reporters from the Year-Books of Edw. III to his day. We quote an observation which seems pertinent to the times: — "After the Revolution, many reports have been published, most of which 'set open the windows of the law to let in the gladsome light, whereby the reason thereof may be clearly discerned:' and though 'some of them, as Justice Shelley said, might be compared to Banbury cheeses, whose superfluities being pared away, there would not be enough left to bait what Lord Hale called the *Mousetrap of the Law;* yet probably the meanest of them may, like the little birds, add something toward building the eagle's nest.' "
London. 1871. Full antique calf..... $16.00

IV. **Sir Robert Brooke's New Cases, with March's Translation.** [Nouell cases de les ans et temps le Roy, H. 8. Ed. 6. et la Roygne Mary, 1578. Tottelli.] Though compiled by Bellewe, there is no indication in the volume known and cited as "Brooke's New Cases" that he was the author, but in the very quaint and interesting epistle prefixed to the "Cases temp. Richard II." Bellewe states that the favor extended to his Collection of Brooke's New Cases prevailed with him to publish another volume. He compiled the two collections on different systems, one under years and the other under titles; but it would seem that the chronological arrangement was not so useful as the other, for March, in his translation of Brooke's New Cases [1651], has reduced them alphabetically under their proper heads and titles.
London. 1873. Full antique calf ... $21.00

V. **William Kelynge's Reports in Chancery and King's Bench.** The first edition appeared in 1740, a second edition was published in 1764, to which were "added seventy new cases, not in former editions." The Chancery Cases (43 pp.) cover the period from 1730 to 1732, the King's Bench Cases, 1731 to 1734. William Kelynge, the Editor of these Reports, was admitted a Student of the Inner Temple, 25th June, 1726, and was called to the Bar 19th November, 1731. This volume of reports has been cited as 2 Kelynge, to distinguish it from 1 (or J.) Kelyng.
London. 1873. Full antique calf ... $21.00

VI. **Sir John Kelyng's Reports of Crown Cases.** There have been two editions of these cases, the first published in London, in 1708, folio, and the second, Dublin, 1789, octavo. Neither of these contained all the cases collected by Sir John Kelyng and left in MS. The omitted cases are included in this edition, and, to readily distinguish them, are printed in red ink. The "Treatise on High Treason" (first printed in 1793) at the end of the volume being a kindred subject, and containing numerous references to Kelyng, forms an interesting appendix. The volume contains the Resolutions of the Judges called together at the restoration of Charles II to determine the law and proceedings that should govern in the trial of the persons apprehended for the murder of Charles I.
London. 1873. Full antique calf ... $21.00

VII. **Shower's Cases in Parliament.** The early editions were published in folio form in 1698 and 1740. That of 1740 purports to be "the third," but Mr. Soule was unable to find a second edition, or any record of one. These early editions having become difficult to obtain, and the publishers having some Appeal Cases decided between 1726 and 1733, not reported in the House of Lords Reports, they secured Mr. R. L. Loveland to edit a new edition, incorporating the new cases. This edition is an octavo and is styled the fourth.
London. 1876. Full antique calf, cracked ..... $10.00

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#### Sources of English Law.

**Bracton de Legibus.** A Treatise on the Laws of England. 4to. London. 1640 $10.00

**Britton.** Second ed. Faithfully corrected according to divers ancient manuscripts. By Edm. Wingate, Gent. 24mo. Lond. 1640 ..... 6.00

**Britton.** Containing the Ancient Pleas of the Crown; translated. References, Notes and Ancient Records. By Robert Kelham. 12mo. London. 1762..... 5.00

**Brooke** (Sir Robert). La Grande Abridgment. 2 vols. in 1. Small 4to. Richard Tottell. 1576..... 10.00

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**Brunner** (H.). Sources of the Law of England: an Historical Introduction to the Study of English Law. Translated by W. Hastie. Edinburgh. 1888 ..... 1.50

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**Coke** upon Littleton. Hargrave and Butler's Notes. 1st American from 19th English ed. 2 vols. Philadelphia. 1853 12.00

**Coke** (Sir Edward). Institutes of the Laws of England. Part I. Commentary upon Littleton. 3 vols. 1794. — Part II. Ancient Statutes. 2 vols. 1797. — Part III. Treason and Criminal Causes. 1 vol. 1797. — Part IV. Jurisdiction of Courts. 1 vol. 1797. In all 7 vols. London ..... 15.00

**Doctor and Student.** The Dialogue, in English, between a Doctor of Divinitie and a Student of the Lawes of England. London. 1623 ..... 3.50

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**Finch** (Sir Henry). Law: or a Discourse thereof. Written in French, and done into English by the Author. 32mo, calf. London. 1636 .....$ 5.00

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**Fitzherbert's** Abridgment. Large folio. Broken binding. London. 1565. [*Title torn in one corner; otherwise fine copy*].. 15.00

— *The same.* Folio. Tottell. London. 1577 ..... 10.00

**Fleta:** Sen Commentarius Juris Anglicani. Accedit *Fet Assavoir.* Subjungitur Joan. Seldeni Dissertatio Historica. 1st ed. Small 4to. London. 1647 ..... 7.50
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**Glanville** (Runulpho de). Tractatus de Legibus et Consuetudinibus Regni Angliæ. Preface by John Rayner. Old calf. London. 1780. [This is the edition Sir John Wilmot claims was pirated by Rayner from him. See pages 13, 15, Leg. Bib., N. S.]..... 6.00

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**Rolle's** Abridgment. Un Abridgment des Plusieurs Cases et Resolutions del Common Ley; digest per Henry Rolle. 2 vols. in 1. London. 1668..... 6.00

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**Clayton's Reports and Pleas of Assises** at Yorke. 24mo. London. 1651. Calf. 25.00

**Davis Reports.** [Le Primer Report des Cases & Matters en Ley resolves & adiudges en les Courts del Roy en Ireland. Collect et digest per Sr. John Danys, Chiualer Atturney Generall del Roy en cest Realme.] Folio. Dublin. 1615 ..... 5.00

[This is a curious volume. A Preface Dedicatory in English covers 22 pages, omitted in later editions. The reports cover 96 folios, the first 83 folios being printed in **Black** Letter, in law-Latin, the remainder in ordinary type in English.]

**Keilwey's** Reports; 2d ed. Relationes Quorundum Casuum Selectorum ex Libris Rob: Keilwey Ar: . . . necnon Relationes nonnullorum Casuum per . . . Gulielmum Dalison & per Gulielmum Bendloes. (Preface by Jo. Croke). Folio, broken calf. London. 1633. . . . $ 10.00
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[Comparison of these two editions verifies the supposition expressed in note 8. p. 91, Lawyers Reference Manual, that the first and second editions of Keilway are not the same. The type is different, and the Dalison and Bendloes cases are not in the first edition.]

**Latch's Reports.** Cases determined in the Court of King's Bench during the I, II and III years of Chas. I. First published in Norman-French, 1661. Translated into English by F. X. Martin, Newburn, N. C. 1793. 12mo. 7.50

[The translator did much original work, increasing the value of his edition over the original. Practically it is of much value, as it makes the matter in Latch available to the modern practitioner, not ordinarily familiar with Norman-French.]

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**Pitcairn** (Robt.). Ancient Criminal Trial in Scotland. 4 vols. Edinburgh. 1833 30.00

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### Australia.

**A Beckett,** William. Judgments of the Supreme Court of New South Wales, for the District of Port Phillip (Victoria) delivered during the years 1846, 1847, 1848, 1849, 1850, 1851. Cited as Shadforth's Reports. Melbourne, 1847–53. 6 vols. original edition, bound in 2 75.00

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# Legal Bibliography.

No. 7, Vol. 4, N. S. BOSTON, MASS. July, 1911

## YEAR BOOK NOTES

By Hammond

[After the death of the late Prof. W. G. Hammond of St. Louis and Iowa, some of the slips on which he had jotted occasional notes came into my hands. They are not sufficiently correlated or complete to publish as an article, but I have come across the following memoranda among them, which may interest students of the ancient black-letter books.

Charles C. Soule.]

### Book of Assizes

When was it compiled? In it there are numerous references to Rich. II as the reigning king.

That it was a subsequent compilation, not a contemporary record, is clear not only from its form and contents but from some references to it. Lord Coke in Mary Partington's Case, 10 R. 40, corrects a case from 29 Ass. pl. 17 by referring to a different account in the "book at large" and afterward adds in the same connection (p. 4) "and hereby you may see, good reader, how dangerous it is to ground an opinion upon *any abridgement*."

That this is largely a compilation from the Y. B. may be seen by comparing: —

| | | | | |
|---|---|---|---|---|
| 17 An. | 51 | pl. | 18 with | Pasche 18 Ed. III, 13 pl. 8. |
| | 52 | " | 16 " | Mich. 17 Ed. III, 52 pl. 31 and 79 pl. 119. |
| | 51 | " | 17 " | Mich. 17 Ed III, 52 pl. 32 (not noted in text). |
| | 51 | " | 19 " | Pasche 18 Ed. III, 19 pl. 26 (notable for the change made in form of Lib. Ass. —showing that it was a *digest*— not a mere abstract.) |

### Liber Assisarum

Probably first printed in 1514—(5 Hen. VIII). That is the date of Rastell's Prologue. He says, after a pedantic and rotund discussion of the value of the Common Weale, that Fortescue's *de Laudibus* suggested his work, by showing the value of the laws.

"Which premises . . . have greatly exhorted and moved us at this time to take some pains and labor to order this present book as well as in the new tables devised as in the quotations and numbering of the cases thereof, and in the imprinting of the same."

He then explains that the numbers on the *right* hand show the year and case number of the Assizes: those on the left the references to the Abt of Fitzherbert. This does not correspond with the ed. of 1606, where all the references are on the outer edge of each page and are to *Brooke*, while those to Fitzh. are printed in the text, at the end of each pl.

(Year 30.) Notice the fulness and particularity of these later years as compared with the former.

There are numerous references from the years 11 to 16, to the same years of the Y. B., not in the printed books we now have. They usually accompany references to Fitz. (tho' these are not exhaustive. I have found such cases in the places in F. beside those referred to):—and when we turn to F. we find that many of his cases are evidently taken from another report containing details not in the Assizes.

These references begin with the first year, and continue to 20 or 21,— ceasing just about where the reports in Lib. Ass. become fuller. After the 21st year they are very rare.

In some of the later years (*e.g.*, 42, 44, etc.), are many cases taken verbatim from contemporary Y. B., as is noted in a very old hand, in my copy.

30 Ass. pl. 24, fo. 177, & 50 Ass. pl. 4 fo. 23 are *verbatim* the same.

19 Ass. pl. 1, fo. 60, & 47 Ass. pl. 8 fo. 312 are almost the same.

**40 Edw. III**

In 40 Ed. III, ed. of 1600, are frequent references printed in the text, to other Y. B. down to H. VIII inclusive, with year and page (or case?). After this year such notes are few.

See the peculiar *Telos* and list of Judges & Sargents at the end of this year. It evidently is taken from a peculiar copy of this year above. Subsequent years have no such additions. The annotator speaks in the first person fo. 22–23, 47, etc., as he does in *Telos*.

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**Cessation of Y. B.**

The cessation of the Y. B. in the reign of H. VIII is not an isolated fact. Two other very notable facts coincide closely with it. One of these is the activity of the Legislature. Such statutes as those of Uses, of Wills, and others, mark an era of legislation such as had not been seen in England since Edw. I.

The other is the sudden springing up of treatises upon the law. Such a work had scarcely been known for more than two centuries. After Britton there is nothing that deserves to be called a treatise on law until we reach the Doctor & Student.

There is a disposition, too, to quote treatises in place of precedents, very observable in some of the books of Queen Elizabeth's reign,—still more so in that of James. See Lambarde's Eirenarcha (or quotations from it in Lawin's Hogike.

---

**Fitzherberte & Brooke**

Brooke's Abridgment is said by Mr. Bridgman (Legal Bibliography) to be based upon the work of Fitzherbert, — but I have never been able to see any resemblance between them that would warrant this remark.

Fleetwood in his preface to the Y. B., Edw. V., dated Sept., 1579, says that Brooke was published five years before and had almost superseded F., for no reason that he could see except that F. had only 391 titles and B. had 633.

**Fitzherbert & Brooke Contrasted**

Brooke is a digest of the printed Y. B., and has few (if any) cases that are not found in the books we now possess.

Fitzherbert probably compiled his work before the Y. B. were in print. Many of the references to pages given in the later editions were added after the first appearance of the work. The work as a whole is a compilation from the M.S. books without reference to the distinction made by printing. Hence the large number of citations from H. III, Edw. I & II & R. II. Fitz. always refers from one place to another by the title and regnal year—not by page or pl.

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The bulk of the copy of this number was made up by our Mr. Chipman while sitting on the deck of the White Star liner *Arabic*.

Following the settled policy of the Boston Book Company to send a representative abroad at frequent intervals, it seemed wise that Mr. Chipman should make the trip this year. During his absence he will visit Ireland, Scotland, England, Holland and Germany. He will not only visit the regular trade, but will search in out of the way places for scarce books, in the hope of finding material to fill existing gaps in the American law libraries, so as to still further increase their efficiency, and continue to keep them the most complete law libraries in the world.

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This is the only text-book on the subject published since 1895. It contains every American case, the full text of all existing statutes and of all prior statutes which have been construed by the courts, with a full history of the legislation in every state. It is the only publication containing the full text of the legislation of 1911, which has changed the law in a dozen states.

It consists of two parts — the first part treating the subject in the usual text-book form, with full citations of all authorities, and the second part consisting of the statutes of all the states, annotated. In this way the reader by turning to Part I can find readily all the law on any disputed point and by turning to Part II he can find all the law of the state in which he happens to be interested.

The avoidance of inheritance taxes forms one entire chapter of the work and contains a full discussion of the various attempts which have been made and can be made by investors to avoid paying this tax with a full discussion of all the cases on the subject. The authors believe that this one chapter, containing as it does material which was never collated before, should prove of the greatest value to careful investors.

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# Legal Bibliography

No. 8, Vol. 4, N. S. BOSTON, MASS. October, 1911

## MODERN LEGAL PHILOSOPHY

History shows that there always have been cycles of legal progress, and that they have often been heralded and guided by philosophies.

Hitherto our own outlook on juristic learning has been insular. The value of the study of comparative law has only in recent years come to be recognized by us. Our juristic methods are still primitive, in that we seek to know only by our own experiment, and pay no heed to the experiments of others.

America has not had a jurisprudence of its own; it inherited English law and has worked under it for three centuries, until now it has a native law of its own, different from the parent law. Our historic bond with English law alone, and our consequent lack of recognition of the universal character of law as a generic institution, has prevented any wide contact with foreign literatures.

The time has come to re-state the American system as we have developed it. To do this means that there must be a philosophy of law, thought out and understood, underlying all efforts at reconstruction. But we have no philosophy of law. From England we inherited none, because it had none, except a single school,— the Austinian school of analytic jurisprudence — a mere fraction of the whole subject.

Now before we attempt to develop our own philosophy of law we must, therefore, take account of what has been done on the Continent. We must know something of the history of the subject, and of the chief modern views now dominant there. Then, after assimilating those, we shall be in a position to develop a strong native system, suited to our own conditions.

What is needed is the popularization of the philosophy of law throughout the legal profession. Legal reconstruction can never be achieved by a few scholars, however able and profound. Their work must find an intelligent response and acceptance on the part of the lawyer and the legislator. Hence an acquaintance with the general state of philosophical science in law must be widespread in the profession, especially among the younger men. There must be courses and classes in all law schools. After a few years the field will be ripe, and our own jurists will spring up to develop our own system.

But hitherto there have been no accessible materials for this educative process. It has all been in foreign languages. It is now proposed to overcome this difficulty by the publication of the **"Modern Legal Philosophy Series,"** which will consist of translations of leading works on all aspects of general legal science and the philosophy of law by the most eminent Continental thinkers in that field.

### IMPORTANCE OF THE SERIES

To the legal profession in general, and also to publicists, economists and political scientists, this Series will be invaluable. It will enable them to make the fullest acquaintance with the best modern thought of the Continent on problems and principles which are today of equal moment in American law and practice.

The Editorial Committee (composed of representatives of five leading faculties of law), in the memorial to the Association preceding the Association's resolution of 1910 to undertake the Series, set forth their reasons, in part as follows: —

"The need of the Series is so obvious as hardly to need advocacy. We are on the threshold of a long period of constructive readjustment and restatement of our law in almost every department. We come to the task, as a profession, almost wholly untrained in the technique of legal analysis and legal science in general. Neither we, nor any community, could expect anything but crude results without thorough preparation. Many teachers and scores of students and practitioners must first have become thoroughly familiar with the world's methods of juristic thought. As a first preparation for the coming years of that kind of activity, it is the part of wisdom first to familiarize ourselves with what has been done by the great modern thinkers abroad— to catch up with the general state of learning on the subject. After a season of this, we shall breed a family of well-equipped and original thinkers of our own; for our own law must of course ultimately be worked out by our own thinkers.

"How far from 'impractical' this field of thought and research really is has been illustrated very recently in the Federal Supreme Court, where the opposing opinions in a great case (*Griffin* v. *Fairmont Coal Co.*) turned upon the respective conceptions of 'law' in the abstract, and where Professor Gray's recent work on 'The Nature and Sources of the Law' was quoted and supplied direct material for judicial decision."

### SCOPE OF THE SERIES

The scope of the Series is broad, and is not limited by partisan views as to the schools of thought or the principles of legal science. The only aim of the Committee has been to select those works which are most typical of the best Continental thought and most suited to assist legal thought in America.

It sought to give representation to each of the dominant modern schools of thought. It has also chosen works which have a universal message for the profession in this as in all countries. Accordingly it has sought to give adequate representation primarily from the thinkers of the three countries most active in legal science — France, Germany and Italy; there is also some representation of juristic thought in Spain, Hungary, Russia and Switzerland, so far as was feasible.

Of the various schools of legal philosophy, all are represented — the historical, the analytic, the sociologic, the positivist, the metaphysical, the ethical, etc. The Committee's aim has been to present the American profession with all the indispensable materials for becoming familiar with the best Continental thought.

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The aggregate price of the thirteen volumes in the Series is $53.25, but subscriptions to the whole Series will be taken at $42.60.

### THE BOOKS ALREADY PUBLISHED

The Series was really begun, in 1909, with the publication of Prof. W. G. Hastings' translation of **Korkunov's General Theory of Law.** This was published independently by the **Boston Book Company,** not knowing that the publication of a series of books on similar lines was contemplated by a committee of the **Association of American Law Schools.** This first work was followed, early in 1911, by **Gareis' Introduction to the Science of Law,** also published independently by the same company.

As these books fitted so well into the general scheme formulated by the committee, they were adopted as a part of the **Modern Legal Philosophy Series,** the Gareis being made the first volume, and Korkunov, the fourth.

Professor Korkunov's work represents the eclectic result of the lifetime's labors of a leader of legal thought in a country which, like our own, has developed apart from the Roman Law traditions of France, Germany and Italy, and has thus had an untrammeled choice among the dominant theories. This work was selected by Professor Larnaude of the University of Paris, for translation into French, as one of the most important contributions of modern times. The author's point of view is original and in some respects radical. The reviews of it which have appeared in English and American legal journals have indicated that it has a high usefulness for legal thought in this country.

The translator, Professor Hastings, is well known among American legal scholars, and for his early and active interest in encouraging the study of the philosophy of law in America the legal profession owes him a debt of gratitude.

Professor Gareis is a leader in several departments of German legal thought. This work is intended as a general introduction to legal science. It uses freely all the methods of exposition — historical, analytic and philosophical. In this Series it will serve as a comprehensive introduction to Continental modes of legal thinking, and thus prepares the way for all the ensuing volumes. The type of literature of which this book is representative is one of the most prolific forms of German juristic writing; this work was selected for translation as the best example of its class. It deals primarily with the formal side of the law, upon the assumption that the form of the law is essentially the same everywhere. It also serves a useful purpose as an introduction to that great modern legal achievement — The German Civil Code

The translator, Mr. Kocourek, studied at Lake Forest University, where he specialized in Metaphysics and Philosophy, and is an LL.B. of the University of Michigan. He is a practitioner at the Chicago Bar, as well as lecturer in Northwestern University. His extensive acquaintance with the literature of Continental legal philosophy is not excelled by that of any American jurist.

### IN PRESS

Comparative Legal Philosophy, applied to Legal Institutions. By Luigi Miraglia, formerly Professor of the Philosophy of Law in the University of Naples. Translated by John Lisle, of the Philadelphia Bar. With an Introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University.

Professor Miraglia, who is eminent among Italian thinkers, and has been Secretary of the Academy of Moral and Political Sciences, has here provided an interesting volume, which makes with that of Dr. Berolzheimer an invaluable introduction to the later volumes of the Series.

Every main branch of public and private law is taken up in succession, and on each branch the point of view of the principal philosophies of law is examined and criticized. *E.g.*, under Property, Contract, Commercial Law, Industrial Rights, etc., the general theories of Kant, Aristotle, Bacon, Montesquieu, von Ihering and others, ancient and modern, are noticed and compared. The treatment, it will thus be seen, is by horizontal (or topical) cross-sections, while that of Dr. Berolzheimer is by perpendicular (or chronological) sections, and the two works complement each other most serviceably; especially as in Professor Miraglia's work the modern Italian and French philosophers, not considered by Dr. Berolzheimer, are fully discussed.

The translator, Mr. Lisle, is a graduate of the College and Law School of the University of Pennsylvania, and a practitioner at the Philadelphia Bar. He is also the translator of the works of Del Vecchio and Vanni, in the present Series, and of Calisse's "History of Italian Law," in the Continental Legal History Series.

### IN PREPARATION

The World's Legal Philosophies. By Fritz Berolzheimer, President of the International Society of Legal and Social Philosophy at Berlin. Translated by Mrs. Joseph Jastrow of Madison, Wisconsin. With an Introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University.

Dr. Berolzheimer is one of the most original and learned of the younger German thinkers. The present volume offers a comprehensive historical survey of the works of all the philosophers of the world in their treatment of legal theory. Beginning with the ancients, it carries the summary down through the nineteenth century, with special attention to German philosophy in modern times. The emphasis throughout is on the social, political and economic conditions in which the legal philosophies grew up. With this historical introduction to the various schools of philosophy, and their successive points of view, the reader is equipped to estimate the significance of the modern leaders of thought represented in the ensuing volumes.

The translator, Mrs. Jastrow, is the wife of Professor Jastrow, of the Department of Psychology in the University of Wisconsin. Her skill in the translation of works of legal science has already been shown in her translation of Professor Saleilles' "Individualization of Punishment" in the Modern Criminal Science Series. The wide range of literature covered in Dr. Berolzheimer's work makes its translation an especially exacting task.

The Philosophy of Law. By Josef Kohler, Professor of the Philosophy of Law in the University of Berlin. Translated by Adalbert Albrecht of South Easton, Mass., Associate Editor of the Journal of Criminal Law and Criminology. With Introductions by José Castillejo, Professor of Law in the University of Valladolid, and by Adolf Lasson, Professor of Philosophy in the University of Berlin.

Professor Kohler, besides his work in the field of Commercial Law (Bankruptcy, Patents, etc.), and his acknowledged leadership in Comparative Law, has attained an eminent position in European Philosophy of Law. He is editor-in-chief of the recently founded "Journal of Legal and Social Philosophy" (of which Dr. Berolzheimer is associate editor) and Honorary President of the International Society of Legal and Social Philosophy at Berlin. Though the Journal's pages are open to all creeds, Professor Kohler himself stands in Europe as the chief representative of the Neo-Hegelian school of thought. The present work, in which he has recently expounded that system, is the fruit of thirty years of legal research and experience perhaps more comprehensive than any other living man's. It is an epoch-making book, written by an epoch-maker.

The translator, Mr. Albrecht, has studied at the University of Vienna and other European Universities, and is well known for his critical reviews of Continental literature. He is also the translator of Aschaffenburg's "Crime and its Repression," in the Modern Criminal Science Series, and is an associate editor of the Journal of the American Institute of Criminal Law and Criminology.

The publishers are pleased to record the fact that the publication of the "**Modern Legal Philosophy Series**" seems to meet with the approval of the legal profession in America, and that they are signifying it by subscribing liberally to the entire Series.

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## THE ISLE OF MAN

The Isle of Man, anciently called the Kingdom of Man, though tributary to the British Crown, was never annexed to it, but has enjoyed within itself, from time immemorial, a free constitution.

The feudal system, though in some degree adopted in the island, was never experienced there in the strictness with which it was attended in other countries. The people of this island enjoyed the privilege of being governed by laws of their own making, or consented to by themselves, or their constitutional representatives.

The Isle of Man, although a dominion, is not a "foreign" dominion of the crown, nor is it within the United Kingdom. Its law, apart from English statutes expressly or by necessary implication extended to it, consists of the common law of the island, and of the Acts of Tynwald.

The Governor, the Council, and the House of Keys, consisting of twenty-four members, who are the direct representatives of the people, constitute the Court of Tynwald. Bills which pass the Council and the House of Keys require the assent of the King in Council, and do not become law till they have been promulgated, with special ceremonies, at a certain place near the centre of the island, called the Tynwald Hill.

The tendency in modern times in the island has been to assimilate the local legislation to that of England.

The legal literature of the island is very meagre. Until the beginning of the fifteenth century no written law, or any accounts of judicial proceedings, are to be found on the records. From 1693 to 1713 one John Parr was Deemster. He compiled "An Abstract of the Laws, Customs and Ordinances of the Isle of Mann." This work was never printed, but a few manuscript copies have been made from it. It contains much valuable information as to the state of the law in his day. Volume XII of the Manx Society Publications has for a title page, "An Abstract of the Laws, Customs, and Ordinances of the Isle of Man; compiled by John Parr, Esq., Formerly one of the Deemsters of the Island. Edited, with notes, by James Gell." The editor, in his introduction, states that this volume "has in it no part of the Deemster's work beyond the two dedications."

In 1792 Mr. Thomas Stowell, afterwards Clerk of the Rolls, but then an advocate at the Manx bar, published a small book of 170 pages, containing an abridgment of the "Statutes and Ordinances," alphabetically arranged. This little work, useful even now, must have been invaluable then as the first printed book of Manx Law.

An attempt at a publication of the Statutes at length was made, in 1797, by Christopher Briscoe, a printer in Douglas; but from its very imperfect and mutilated state, its inferior paper and type, and its want of sufficient document to stamp its accuracy and authenticity, it failed to afford general satisfaction. This work must have disappeared as no copies are now obtainable.

In 1805 the Commissioners who, in 1791, had been appointed to inquire into "various points connected with the Isle of Mann," published their report, containing, among other

things, a copy of the Statutes down to 1777; some few remarks upon certain parts of the law by the Deemsters, Clerk of the Rolls, and Attorney-General of the Island; together with much valuable statistical and general information.

In 1811 Mr. J. Johnstone published "A View of the Jurisprudence of the Isle of Mann," a book which does not quite fulfill the promises of the title page, but yet contains some valuable information.

In 1817 James Clark, formerly Attorney-General of the Island, published a pamphlet entitled, "A View of the Principal Courts of the Isle of Man."

In 1819 George Jefferson published "The Lex Scripta of the Isle of Man; comprehending the Ancient Ordinances and Statute Laws, from the Earliest to the present Date," and in 1820 an Appendix thereto.

In 1821 Mark A. Mills published "The Ancient Ordinances and Statute Laws of the Isle of Man." He included in his work extracts from the British Statutes referring to the island.

In 1832 George Geneste published a continuation of the Statutes from 1821 down to that period, with the rules and regulations of the Insolvent Debtor's Court, the Act for regulating Trade in the island, and an abridgment of such British Statutes as related to it.

In 1837 John M. Jeffcott continued the Statutes down to 1836, to which he added an appendix containing the rules of the Chancery Court, an analysis of the law of descent of hereditary property, and a digest of the British Statutes.

In 1847 J. C. Bluett published the "Advocates Note Book," being notes and minutes of cases determined before the Judicial Tribunals of the island. This is the only volume of reports that has been published. It is a rather scarce work. The few copies in the hands of the Manx bar are carefully guarded and copies seldom get into the hands of law book dealers. The small remainder held by the printers was long since exhausted. The earliest case reported was decided in 1720, the latest on May 31, 1847.

In 1848 James Gell published a compilation of the Statutes from 1836 to 1848, with an appendix containing the by-laws for the government of towns and the rules of the Court of Chancery.

In 1853 James Burman continued the Statutes down to 1853.

In 1862 John C. Lamothe published a compilation of the Statutes promulgated from the year 1853 to the year 1861 inclusive.

In 1872 J. Fred Gill continued the Statutes to 1865 and added an appendix containing the rules of the Courts of Chancery and Exchequer, and the regulations for common lodging houses.

The last revision of the statutory law of the Isle of Man was published at intervals from 1883 to 1897. The work is in six volumes and was edited by J. F. Gill. The first volume covers the period from 1417 to 1824; the second volume, from 1824 to 1859; the third volume, from 1860 to 1871; the fourth volume, from 1872 to 1878; the fifth volume, from 1879 to 1886; the sixth volume, from 1887 to 1895. The work has long since gone out of print, and second hand sets are seldom met with.

Some of the statutory material, prior to the last revision, and a few copies of the reports can now be secured. The island has been searched from end to end by enterprising dealers, but a very limited supply has been found. Practically all of this was bought by the editor when he was in England this last summer. This material is now being distributed among the libraries in the United States. When this limited supply is exhausted it is doubtful if another can be obtained.

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## RARE AND INTERESTING LAW BOOKS

We give a memorandum below of some of the scholarly and notable books which we have received during the last three months, and which we can now offer for sale.

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**Franklin,** Otto. Beiträge zur gesichichte der reception des römischen Rechts in Deutschland. 8vo. half morocco. Hanover. 1863 ..... $1.25

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—— Acts of the General Assembly of the State of Georgia, passed at Milledgeville, at an Extra Session, in April and May, 1821. t. [1], pp. [3]–40, Index 2 pp. Facsimile reproduction.

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# LEGAL BIBLIOGRAPHY

## NEW SERIES

ISSUED QUARTERLY

Vol. IV FEBRUARY, 1912 Number 9

Published February 1st, 1912

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THE COMMERCIAL LAWS OF THE WORLD

VOL. I. THE ARGENTINE REPUBLIC AND URUGUAY

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VOL. II. COLOMBIA

ANNOUNCED FOR PUBLICATION, MARCH, 1912

THE BOSTON BOOK COMPANY, Publishers

83-91 FRANCIS ST., FENWAY BOSTON, MASS.

# Legal Bibliography

No. 9, Vol. 4, N. S. BOSTON, MASS. February, 1912

## INTERNATIONAL COMMERCIAL LAW

A well-known American writer of law literature recently said that "the exigencies of international trade demand a further unification of the principal topics of substantive commercial law, and the twentieth century may view in respect of these a federation of the world."

**THE MISSION OF COMMERCIAL LAW.** — Professor Kohler, that profound student of comparative law, has thus characterized the mission of commercial law.

"A twofold task is imposed upon the nations of the earth. Not alone must they develop their own national greatness, but they must fit themselves to be members of the greater world state, and to lend their aid in the development of world ideas. This necessitates that the national legal system reflect not alone the distinctive national characteristics, but also those of an international character. In the struggle for supremacy between these two forces, one national, the other universal, is to be found one of the most vital factors in human progress. . . . In this wise will be realized the dream of a brotherhood of nations, emblematic of strength and peace. **The law of commerce is one of the means by which the nations of the earth are brought together, and by which is furthered the cause of universal peace.**"

**PROGRESS TOWARD UNIFORMITY.** — Commerce is everywhere directed toward the achievement of the same results, and the laws governing it are, within a given period of the world's history, fundamentally the same. Commerce is international in its scope, and its laws, in order to meet the varying and complex conditions, must be liberal and equitable.

The progress toward unification in the domain of commercial law is seen everywhere. Great Britain has codified her law on negotiable instruments, sale of goods, partnership, marine insurance, has consolidated the law relating to companies (corporations), and has adopted a Limited Partnership Act. This example has been followed by the British colonies, notably Australia and Canada.

In the United States, the uniform acts on negotiable instruments, sale of goods, bills of lading, warehouse receipts and stock transfers proposed by the Commissioners for Uniform State Laws are being rapidly adopted by the various states. Such action will doubtless be followed by the adoption of uniform acts on partnership and perhaps on corporations.

Denmark, Norway and Sweden have by agreement adopted uniform laws on bills of exchange and practically identical laws on trade marks, patents, commercial registers, checks, agency and shipping. The principal continental countries are bound by a convention in regard to international transportation of freight, and the movement thus inaugurated is destined to extend to marine transportation and other topics.

**RELATION OF COMMERCIAL TO CIVIL LAW.** — A characteristic feature of the commercial law as it prevails in nearly all of the countries of Europe, and such others that have been under the influence of the continental law, is to class commercial law as a branch of private law distinct from the general civil law. This dualism has been severely criticised, and there is now a tendency towards unification by generalizing the application of the rules of commercial law.

This system has never prevailed in the United States, though in England it once seemed that the law merchant was destined to become a distinct system applicable to merchants or to mercantile transactions. In the codes of Louisiana, California and Georgia, and in the civil code of Quebec, the civil and commercial law are treated as a unit.

**KNOWLEDGE OF FOREIGN COMMERCIAL LAW.** — As commerce tends to become international, the legal questions to which it gives rise make a knowledge of foreign commercial laws of practical importance to the bench and bar of every country. When an English ship is chartered by a citizen of the United States to load cotton in Egypt, under bills of lading executed there, and deliver it in Antwerp, and on the way puts into a Spanish port in distress, the lawyer, suddenly called upon to advise, looks hastily for a work in which he can find the law of England, Egypt, Belgium or Spain applicable to the point in question. The want of such a work must have been felt by every lawyer engaged in commercial practice.

Such a work, in German, "Die Handelsgesetze des Erdballs," has been available for some time. What was needed was a work in English or an English or American edition of the German work. There has been in preparation for some time now an American edition of this work as

**THE COMMERCIAL LAWS OF THE WORLD.**

This work is to be completed in thirty-five volumes; volume I, covering the Argentine Republic and Uruguay, was published in the United States on February 1, 1912. Six volumes will be devoted to South America, two volumes to the United States, three volumes to Mexico, Cuba and Central America, one volume to Africa and Asia, six volumes to Great Britain and Ireland and the British Possessions and Protectorates, two volumes to North Europe, nine volumes to Central Europe, two volumes to East Europe and four volumes to South Europe.

**THE SCOPE AND PURPOSE OF THE WORK.**

The Commercial Laws of the World aims to give a complete view of the commercial law of all civilized countries. It includes not only the provisions of the codes of commerce, but of other codes and statutes on mercantile matters, or affecting codes and statutes relating to commercial matters. More especially, it is designed to give the existing law relating to foreign and domestic corporations, general and limited partnerships, sale of goods, factors, brokers, commission merchants, bills of lading and the responsibility of carriers of goods by land and sea, marine insurance, contracts of bottomry, maritime liens, banks and banking, stock exchange contracts, warehouse receipts, bills of exchange, promissory notes and checks, insolvency and bankruptcy, and the commercial treaties.

The statutory provisions are given fully in the original languages, with an English translation, as far as possible with an uniform terminology to facilitate comparisons between the laws of different countries. These have commentaries showing how the rules are affected by other statutory provisions, their practical application in the mercantile world and their interpretation by the courts.

In countries where the commercial law is not codified, or only partially so (United States, Great Britain and the British Possessions, where the common law prevails, and in Denmark, Norway and Sweden), the uncodified portions are treated in commentaries, which have been prepared by specialists in the law of each country, and with special regard to the use of the bench and bar.

With each country is given a sketch of its political history as it affects its legal system, a brief history of its legal institutions, a description of its courts and procedure in mercantile cases and the rules of prescription and limitation.

**THE COMMERCIAL LAW OF SOUTH AMERICA.** — The American publishers were able to prevail upon the proprietors to devote the first volumes of the series to the commercial laws of South America. There seemed to be a greater immediate demand for a translation of the laws of the countries there than elsewhere. On February 1, 1912, The Boston Book Company, the sole American publishers, began the distribution of **VOL. 1.**

**THE ARGENTINE REPUBLIC AND URUGUAY.**

The General Introduction was written by Charles Henry Huberich, Professor of Law in Leland Stanford Junior University. He is especially qualified to contribute this valuable feature of the work. He was the general editor for the United States volumes in the series, and also edited the laws of Australia, Canada and other British Possessions and Protectorates. He can therefore understandingly describe the scope and purpose of the work. He briefly states the relation of commercial law to civil law, a matter of interest to the American practitioner. By far the most interesting is his **general historical sketch of commercial law.** In this he traces its development from the time when the Roman law first began to exert its influence, down to adoption of the present codes in force.

The Commercial, Bills of Exchange, Bankruptcy and Maritime Law of the **ARGENTINE REPUBLIC** occupies the first part of the volume proper and covers 299 pages in the original language at the left with a corresponding number of pages of English translation on the right. This is followed by an index in English. This was prepared by Ernesto Quesada, Professor of Law in the University of Buenos Aires, assisted by Dr. J. R. Mantilla and Dr. Alfredo Persiani of Buenos Aires, and translated by W. A. Bewes, LL.D., of London. This portion contains an **INTRODUCTION; PROCEDURE IN CIVIL AND COMMERCIAL MATTERS; SUPPLEMENTARY LAWS — Banks — Encouragement of Production — Patents — Trade-Marks — Immigration and Colonization — The Consular corps — International Treaties, Conventions and Agreements; BIBLIOGRAPHY; EXPLANATIONS OF ABREVIATIONS.**

Then follows the **COMMERCIAL CODE.** This consists of four books: — **1st, Commercial Persons; 2d, Commercial Contracts; 3d, Maritime Law; 4th, Bankruptcy.** From an examination of the table of contents it would seem that every commercial and contractual relation was described and every commercial transaction provided for.

The book concludes with a statement of **International Civil Law; International Commercial Law; Literary and artistic copyright** and the **Law of warehouse certificates.**

The text is fully annotated and the decisions of the various courts of the Republic are largely cited. The work appears to be a valuable addition to the literature of commercial law.

The last part of the volume contains the Commercial, Bills of Exchange, Bankruptcy and Maritime Law of **Uruguay.** This was prepared by Dr. Daniel Garcia Acevedo, Advocate of Montevideo, assisted by A. B. Garcia, Bachelor of Law, and translated by Sydney Leader, Esq., of London. It covers 165 pages in the original language, with an equal number of pages of translation, and is followed by an English index.

This book contains an **INTRODUCTION; BIBLIOGRAPHY; EXPOSITION OF COMMERCIAL PROCEDURE.** This preliminary matter is followed by the full **COMMERCIAL CODE,** consisting of four books, divided under the same topics as in the Argentine Code. An appendix is added giving the laws of the **liquidation of limited companies; extension of time; trade and commercial marks; warrants; statutes of the "Centro Commercial" (Chamber of Commerce); treaties of commerce and navigation; consular regulations.**

The text here is fully annotated and citations are made to the Civil Code, while corresponding articles in the Argentine Code of Commerce are referred to. Unlike the work done on that code, there are but few citations to the decisions of the various courts, and these seem to refer to questions of procedure only. It does not follow from this that the work is poorly done, but rather that the citation of cases is not the usual custom in Uruguay, a not unusual practice in countries using the Civil Law.

It is interesting to note that a reform in the Uruguay Code of Commerce, effected in 1900, was inspired by the Belgian Laws of 1883 and 1887 and the English Law of 1883, a practical proof of the progress toward uniformity in the commercial law.

The mechanical work is above the ordinary standard. Its 994 pages are printed on a fine grade of paper, and the print stands out clear. It is handsomely bound in half dark green roan binding, with smooth dark cloth sides and marbled edges. The promises of the proprietors and publishers have been fulfilled. They deserve the liberal support not only of the bench and bar of the United States but the support of commercial bodies, trade agencies, importers and bankers. The fact that such a series is being published should be brought to the attention of such institutions by their counsel. The large law and reference libraries will buy the work as a matter of course. In recognition of the importance of the work many of the governments have not only placed official material at the disposal of the editors, but have ordered sets for the use of their consuls. The claim of the publishers that this series "**is a step toward the building up of universal trade and tends to promote universal peace,**" will undoubtedly be eventually realized.

F. E. C.

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# LEGAL BIBLIOGRAPHY, N.S.

VOL. IV FEBRUARY, 1912 NO. 9

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## OUR FEBRUARY NUMBER.

The editor hopes that this number of **Leg. Bib.** will interest our readers and patrons. More thought than usual has been given to make it attractive. The delay of a month in its publication was intentional. We wanted to give some definite information about the **Commercial Laws of the World.** The leading article is well worth reading. Read also what is said about the **Modern Legal Philosophy Series** and the **Pennsylvania University Law School Series.** The works in these two series will occupy a most important place in legal literature.

## APRIL LEG. BIB.

This number will be issued about a month before the close of our business year. The librarian and book lover should be on the watch for it. It will contain lists of scarce sets and items on hand at that time which must be sold.

## THE GREEN BAG.

Here we have a unique magazine for the lawyer. For twenty years we published it. Four years ago it passed into the hands of its present owner, who put it into a new form, with a new editor, and reduced the subscription price. The **Green Bag** is an entertaining magazine of the law, designed to form a congenial companion for the lawyer's leisure hour, and still keep him within the confines of the profession.

There are still ten thousand lawyers in the United States that need this magazine and don't know it. If you are not a subscriber you should become one at once. The review of legal reviews which appears in each number keeps the busy lawyer right up to the minute in law literature.

## LOOKING FORWARD.

This will be the subject of an editorial that will appear in a future number. From time to time recently we have heard of an attempt to concisely state the *entire body of American law*, by publishing a "Corpus Juris Codex." While this editorial is suggested by such statements, that project will not be discussed, the purpose being to show the natural results of other efforts along similar lines.

**Comparative Legal Philosophy,** applied to Legal Institutions. By Luigi Miraglia, formerly Professor of the Philosophy of Law in the University of Naples. Translated by John Lisle of the Philadelphia Bar. With an Introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University.

This is the third volume of the **MODERN LEGAL PHILOSOPHY SERIES.** The author was born at Reggio in Calabria in 1846. He took his degree at Naples in 1866, and after several years of teaching was appointed to the chair of philosophy of law in the University of Naples. In 1873 he published "The Fundamental Principles of the Various Systems of Legal Philosophy." This work received a second edition in 1893; and the third, enlarged edition in 1903, bearing the simple title, "Philosophy of Law," is the work here translated. He died in September, 1903.

Professor Miraglia commences with a discussion of the basic propositions of the leading general philosophies, treating the subject from a critical and comparative standpoint. From this he passes to the notion of law, and treats in detail the various institutions which appear in society as phenomena of the law. The work is primarily a book of instruction, but it is not a closed vehicle for a theory. The author's point of view is not obtruded on the reader's attention to the exclusion of all other points of view.

The author covers the whole field not only of the subject-matter of Philosophy of Law but also of the philosophies bearing on the subject-matter. Emphasis is naturally placed on the Italian thinkers, but the available German, English and French materials are treated with broad and sympathetic intelligence and conspicuous fairness.

The Italians have been greatly influenced by English thinkers, and their philosophy has accordingly followed a very conservative course. This treatise adequately covers the ground that the author has laid out, and, in connection with **"THE WORLD'S LEGAL PHILOSOPHIES,"** by Berolzheimer, [**Vol. II, Modern Legal Philosophy Series**] practically exhausts the historical part of this subject. It affords an excellent means of approach to a difficult matter.

The translator, John Lisle, Esq., of the Philadelphia Bar, is a graduate of the College and Law School of the University of Pennsylvania. Mr. Lisle possesses the happy faculty of combining the scholarship, linguistic skill and technical knowledge necessary to present this book to English readers.

The introduction to the translated volume is written by Albert Kocourek, a practitioner at the Chicago Bar, as well as Lecturer on Jurisprudence in Northwestern University. He translated **"THE SCIENCE OF LAW,"** by Gareis [**Vol. I, Modern Legal Philosophy Series**]. His extensive acquaintance with the literature of Continental legal philosophy is not excelled by that of any American jurist.

With the presentation of the **MODERN LEGAL PHILOSOPHY SERIES,** of which this excellent book of Professor Miraglia is one of the introductory volumes, Dr. Wigmore, who is the author of the idea and who has been the leading

spirit in its realization, is making it possible for the English-speaking world to attain direct knowledge of the foundations for real legal thought in the large substantive problems common to every system of law.

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### ANNOUNCED FOR EARLY PUBLICATION

**II. The World's Legal Philosophies.** By Fritz Berolzheimer of Berlin. Translated by Mrs. Joseph Jastrow of Madison, Wis. $4.25.

**V. Law as a Means to an End.** By Rudolf von Ihering of the Univ. of Berlin. Translated by Isaac Husik of the Univ. of Pennsylvania. $3.50.

**XII. The Philosophy of Law.** By Josef Kohler of the Univ. of Berlin. Translated by Adalbert Albrecht of South Easton, Mass. $3.50.

### TO FOLLOW

**VI. The Positive Philosophy of Law.** By I. Vanni of the Univ. of Bologna. Translated by John Lisle of the Philadelphia Bar. $3.50.

**VII. Modern French Legal Philosophy.** By A. Fouillee, J. Charmont, L. Duguit and R. Demogue of the Universities of Paris, Montpellier, Bordeaux and Lille. Translated by John Simpson of the New York Bar. 1913. $3.75.

**VIII. The Theory of Justice.** By Rudolf Stammler of the Univ. of Halle. $4.50.

**IX. Select Essays in Modern Legal Philosophy.** By Various Authors. $4.50.

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**XI. The Scientific Basis of Legal Justice.** $4.75.

**XIII. Philosophy in the Development of Law.** By P. de Tourtoulon of the Univ. of Lausanne. $4.75.

In making this selection the Committee has so co-ordinated the individual volumes that they complement each other and form a connected whole. The first volume introduces to the general data of legal science on the Continent. The second and third volumes survey, from two distinct points of view, the entire history of legal philosophy to the present day. The next nine volumes cover the various systems of the present day, as represented by thinkers of accepted eminence in France, Germany, Italy and the other countries. The last volume then takes a final review of all the philosophic systems from a comprehensive point of view.

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## AMERICAN STATUTORY LAW

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We revise our list in this issue, and include our facsimile reprints, so that they will not be overlooked in checking want lists.

Advise us what you lack of the items listed below and we will quote prices.

**Is there anything else you lack?**

**Alabama.** Acts, Fifth Annual Session begun at Cahawba, the third Monday in November, 1823. Pamphlet. Facsimile title-page.

—— Acts, Sixth Annual Session begun at Cahawba, the third Monday in November, 1824. Pamphlet.

—— Acts, Seventh Annual Session begun at Cahawba, the third Monday in November. 1825. Pamphlet.

—— Acts, Eighth Annual Session begun at Tuscaloosa, the third Monday in November, 1826. Pamphlet.

—— Acts, Ninth Annual Session begun at Tuscaloosa, the third Monday in November, 1827. Pamphlet.

—— Acts, Tenth Annual Session begun at Tuscaloosa, the third Monday in November, 1828. Pamphlet.

—— Acts, Eleventh Annual Session begun at Tuscaloosa, the third Monday in November, 1829. Pamphlet. The last page of index is in facsimile.

—— Acts, Twelfth Annual Session begun at Tuscaloosa, the third Monday in November, 1830. Pamphlet.

—— Acts, Annual Session, Nov., 1835.

—— Acts, Annual Session, Nov., 1836. Facsimile title-page.

—— Acts, Annual Session, Nov., 1837.

—— Acts, Annual Session, Nov., 1838.

—— Acts, Annual Session, Nov., 1839.

—— Acts, Annual Session, Nov., 1840.

—— Acts, Called Session, April, 1841. Photo-facsimile copy, Washington, 1895.

—— Acts, Annual Session, Nov., 1841.

**Arkansas.** Acts, Second Session, Little Rock, Nov. 5–Dec. 17, 1838.
—— Acts, Sixth Session, Little Rock, Nov. 2–Dec. 23, 1846.
—— Acts, Ninth Session, Little Rock, Nov. 1, 1852–Jan. 12, 1853.
—— Acts, Tenth Session, Little Rock, Nov. 6, 1854–Jan. 22, 1855.
—— Laws of Arkansas Territory, compiled and arranged by J. Steele and J. M'Campbell, under the direction of John Pope, Governor of the Territory. Small quarto, old sheep, Little Rock, 1835.

**Colonial Laws.** An Abridgment of the Laws in force and use in Her Majesty's Plantations; viz. of Virginia, Jamaica, Barbadoes, Maryland, New England, New York, Carolina, etc. Digested under proper Heads in the Method of Mr. Wingate, and Mr. Washington's Abridgments. London, 1704. A beautiful copy bound in full tree calf, stamped in gilt.

**Connecticut,** Laws of; an exact reprint of the original edition of 1673, with a prefatory note by George Brinley. Folio, half calf. Hartford, 1865. Only 150 copies printed.
—— Acts and Laws of the State of Connecticut in America. Hartford. MDCCXCVI. This volume contains (pp. 439–491) the following added laws, comprising five sessions: —

May, 1796, pp. 439 to 446.
Oct., 1796, " 447 " 454.
May, 1797, " 455 " 468.
Oct., 1797, " 469 " 480.
May, 1798, " 481 " 491.

——May Session, 1809 (pp. 1–16) complete.
October Session, 1809 (pp. 17-23) complete.
May Session, 1810 (pp. 25–40) corner of first leaf gone, but text complete.
October Session, 1810 (pp. 41–50) corner of first leaf gone, text slightly damaged.
May Session, 1811 (pp. 53–64) complete.
October Session, 1813. [pp. 137–144.]

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**PUBLIC STATUTE LAWS, SUPPLEMENT TO REVISION OF 1821.**

May session 1822 (pp. 3–26) no title page.
May " 1823 (pp. 27–39) no title page.
May " 1824 (pp. 41–63) no title page in one pamphlet with 4 pp. joint index, etc.
May " 1826 (title, pp. 93–139) complete.
May " 1831 (title, pp. 311–364) lacks pp. 365–6 and one page of index.
May " 1832 (title, pp. 369–412) last leaf in poor condition, no index.

**Georgia.** A compilation of the Laws of the State of Georgia, passed by the Legislature since the year 1810 to the year 1819, inclusive. Comprising all the laws passed within those periods, arranged under appropriate heads, with notes of reference to those laws, or parts of laws, which are amended or repealed. To which are added such concurred and approved Resolutions, as are either of a General, Local or Private Moment, concluding with a copious index to the laws and a separate one to the resolutions. By Lucius Q. C. Lamar, Esq. Augusta: published by T. S. Hannon, 1821.
—— Acts of the General Assembly of the State of Georgia, passed at Milledgeville, at an Extra Session, in April and May, 1821. t. [1] pp. [3]–40, Index 2 pp. Facsimile reproduction.
—— Acts of the General Assembly of the State of Georgia, passed at Milledgeville, at an Annual Session, in November and December, 1823. Published by Authority. Milledgeville: printed by Camak & Ragland, 1824. t. pp. 270.
—— Acts of the General Assembly of the State of Georgia, passed at Milledgeville at an Annual Session in November and December, 1824. Published by authority. Milledgeville, printed by Camak and Ragland, 1825. t. pp. 220.

**Idaho.** Laws of the Territory, First Sessions convened Dec. 7, 1863. Stitched.
—— Laws of the Territory, Third Session convened Dec. 4, 1865.

**Illinois.** Laws passed by the Legislative Council and House of Representatives of Illinois Territory at their Fourth Session held at Kaskaska, 1815–16. Kaskaska: printed by Mathew Duncan, printer to the Territory: 1816. Reprinted by Phillips Bros., Springfield, Ill. 1898.
—— Laws passed by the Legislative Council and House of Representatives of Illinois Territory at their Fifth Session; held at Kaskaska — 1816–17. Kaskaska, I. T. printed by Cook & Blackwell, Printers to the Territory, 1817. Reprinted by Phillips Bros., State Printers, 1898.
—— Laws passed by the General Assembly of Illinois Territory, at their Sixth Session, held at Kaskaska — 1817–18. Kaskaska, I. T. Berry and Blackwell — Printers to the Territory. 1818. Reprinted by Phillips Bros., State Printers, 1898.
—— Private Laws, Fifth Assembly, December, 1826. 43 pp. Facsimile. Reprint.

**Indiana.** The laws of Indiana Territory, 1801–1806, inclusive, reprinted at Paoli, Ind., 1886.

This reprint includes all the laws of the Indiana Territory from its organization in 1800 to the Jones and Johnson revision of 1807.

These are of special interest to the legal profession of Michigan and Illinois, as well as Indiana, as out of the Indiana Territory were formed both Michigan and Illinois.

**Kentucky.** Acts passed at the second session of the thirtieth, and the first session of the thirty-first General Assembly for the Commonwealth of Kentucky. Begun and held in the town of Frankfort, on Monday the thirteenth day of May; and the twenty-first of October, 1822. Frankfort, 1823. Old sheep binding.

**Louisiana.** Acts passed at the First Session of the Fourth Legislature, Jan., 1819. Finely bound in English blue half calf, with fancy tooling.
—— Acts passed by the 27th Legislature, in extra session at Opelousas, Dec., 1862, and Jan., 1863. **A verbatim reprint of a very scarce Confederate Session.**

**Maryland.** The Acts of Assembly; together with the Governor's Proclamation and the Rules and Regulations respecting the penetentiary of Maryland. Collected and published by the order of the Board of Inspectors. Baltimore, 1819. Pamphlet, 64 pp.
**A scarce Maryland imprint.**
—— Laws of the General Assembly, December sessions of 1821, 1822, 1823, 1824, 1825, 1826, six sessions bound in one volume, sound old sheep.

**Massachusetts.** Acts and Laws of Her Majesty's Province of the Massachusetts Bay in New England, June, 1692, to May, 1716. Small folio (binding broken and text water-stained). Boston, 1714. Collation: Title, 1 page, Acts and Laws, pp. 1–239. [Lacks Table 6pp.]

—— Acts and Laws of His Majesty's Province of the Massachusetts Bay in New England. With charter granted by their Majesties King William and Queen Mary, to the Inhabitants of the Province of Massachusetts Bay in New England. Folio. Boston in New England: Printed by B. Green for Benjamin Eliot, 1726. Collation: Title, Acts pp. 1–560, Charter, Title, pp. 1–14, Table pp. 1–17.

This volume contains (pp. 349–560) the following added laws, comprising 28 sessions: —

| | | | |
|---|---|---|---|
| Nov., 1726, | pages 349 | to 354. | |
| May, 1727, | " 355 | " 370. | |
| Aug., 1727, | " 371 | " 373. | [1 page blank.] |
| Oct., 1727, | " 375 | " 376. | |
| Nov., 1727, | " 377 | " 400. | |
| May, 1728, | " 401 | " 412. | |
| July, 1728, | " 413 | " 416. | |
| April, 1729, Aug., 1729, | " 417 | " 419. | [1 page blank.] |
| Nov., 1729, | " 421 | " 425. | |
| Sept., 1730, | " 426 | " 436. | |
| Feb., 1731, | " 437 | " 456. | |
| May, 1731, | " 457 | " 462. | |
| Nov., 1731, | " 463 | " 468. | |
| Dec., 1731, | " 469 | " 476. | |
| May, 1732, | " 477 | " 483. | [1 page blank.] |
| Nov., 1732, | " 485 | " 490. | |
| April, 1733, | " 491 | " 498. | |
| May, 1733, | " 499 | " 500. | |
| Oct., 1733, | " 501 | " 508. | |
| Jan., 1734, | " 509 | " 510. | |
| April, 1734, | " 511 | " 512. | |
| May, 1734, | " 513 | " 525. | [1 page blank.] |
| Nov., 1734, | " 527 | " 530. | |
| April, 1735, | " 531 | " 534. | |
| May, 1735, | " 535 | " 549. | [1 page blank.] |
| Nov., 1735, | " 551 | " 558. | |
| Mar., 1736, | " 559 | " 560. | |

This collection is contained in one volume finely bound in half calf.

—— Laws passed at a Session in April, 1821. Pp. 563–566. Verbatim reprint.

**Michigan.** Laws of the Territory, adopted by the Legislative Board, 1821–1823. 40 pp. *A facsimile reprint from the original copy in the Michigan State Library.*

**Minnesota.** General Laws, Jan., 1861, 1862, Sept., 1862, Jan., 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1875, 1877, 1878, 1879, 1881, Oct., 1881, Jan., 1883, 1885, 1887, 1889, 1891.

—— Special Laws, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1881, Oct., 1881, Jan., 1883, 1885, 1887, 1889, 1891.

—— Laws, Jan., 1893, 1895, 1897, 1899, 1901, Feb. 1902, Jan., 1903, 1905, 1907, 1909. Any session will be sold separately.

**New Hampshire.** Acts and Laws of His Majesty's Province of New Hampshire in New England. With Sundry Acts of Parliament. By order of the General Assembly. To which is prefixed the commissions of President John Cutts, Esq., and His Excellency John Wentworth, Esq. Folio. Portsmouth, 1771. In original binding well preserved.

—— Laws of the State of New Hampshire [1785–91.] 396 pp., 8vo. Portsmouth, 1792. With the above are bound the following Session Laws: June, 1792, at Dover, t. pp. 397–422. November, 1792, at Exeter, t. pp. 423–451.

—— The laws of the State of New Hampshire, enacted since June 1, 1815, to which is added an appendix, containing the articles of Confederation and Perpetual Union of the States, adopted by Congress, 1778; the Constitution of New Hampshire of 1783, and such of the repealed laws as are necessary to be known. **Vol. II.** Concord: printed by Isaac Hill. 1824.

—— Private Acts, November Session, 1836. Pp. 291–366, index 2 pp. Facsimile reprint.

—— Private Acts, June Session, 1837. Pp. 335–386, index 2 pp. Facsimile reprint.

—— Articles in addition to and amendment of the Constitution of the State of New Hampshire agreed to by the Convention of said State, and submitted to the people thereof for their approbation. Pamphlet, 33 pp. Printed at Exeter, New Hampshire. 1792.

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—— Laws of the State of New Jersey; revised and published under the authority of the Legislature, by William Paterson. Folio. Newark: printed by Matthias Day. MDCCC.

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—— The Statutes at Large edited under Authority of the Legislature by Thomas Cooper, M.D., LL.D., and David J. McCord.

Vol. I: Acts, Records and Documents of a Constitutional Character, arranged chronologically; vol. II: Acts from 1682 to 1716; vol. III: Acts from 1716 to 1752; vol. IV: Acts from 1752 to 1786; vol. V: Acts from 1786 to 1814; vol. VI: Acts from 1814 to 1838; vol. VII: Acts relating to Charleston, Courts, Slaves and Rivers; vol. VIII: Acts relating to Corporations and the Militia; vol. IX: Acts relating to Roads, Bridges and Ferries and the Militia Acts prior to 1794; vol. X: General Index and a list of all the Acts of Assembly. 10 vols. Columbia, 1836–41.

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—— Statutes at Large, 1619–1792, Hening. 13 vols. New York, 1823.

**Wyoming.** General Laws, etc. First Session, Territorial Legislature, Oct. 1869.

—— General Laws, etc. Second Session, Territorial Legislature, Nov., 1871.

—— Session Laws, Fifth Assembly, Nov., 1877.

—— Session Laws, Sixth Assembly, Nov., 1879.

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**Law Reporter,** Boston, 27 vols. 1839–1866.
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[This magazine is entirely out of print and we have the entire remainder.]
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§155. **Executor paying Legacy with his own Money.**
§156. **Homestead Set Off.**
§157. **Insurance or Beneficial Societies.**
§158. **Joint Deposit.**
§159. **Marshalling Local Assets and Debts.**
§160. **Various Gifts to Same Person.**
§161. **Quick Transfer of Stock in Foreign Corporation.**
§162. **Premature Distribution after taking Assets out of Jurisdiction.**

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The **marshalling of assets** in the payment of debts and legacies is fully treated in another entire chapter. This chapter alone should be of the greatest assistance to executors and trustees who desire to protect the estates in their charge, as it is full of suggestions as to the property which should be used to pay debts and the property which should be used to pay legacies and devises of various kinds in order to make the taxes as small as possible.

The work will contain a table of states showing what have the direct inheritance tax and what have a collateral inheritance tax. A table of **rates and exemptions** showing the rate of tax and the exemption in every state for direct inheritance as well as for collateral inheritance. A table showing the taxes on stock owned by non-residents in domestic corporations in each state and also showing whether in each state a tax is claimed on the stock of foreign corporations holding property in the state.

There is also a list of the corporations whose stock is dealt with on the stock exchange, showing the date of incorporation of each. This latter list is of **incalculable value** to the careful investor and also is of great convenience to the executor in arranging for his settlement of the tax.

The book will consist of some 1400 pages. If it was printed on the ordinary law book paper it would have to be bound in two volumes. As it is designed as a book of ready reference, not only for the lawyer, but for the investor and trust officer, it seems wise to issue it in one volume. In order to do so the publishers have contracted for a specially made paper of the best quality, that will make a book of about two inches in thickness. This paper is really stronger than the ordinary law book paper and marginal references can be entered on it in ink without difficulty.

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This important work has been prepared by Arthur W. Blakemore of the Boston Bar and author of "Blakemore on the Abolition of Grade Crossings in Massachusetts"; "Gould and Blakemore on Bankruptcy"; "Massachusetts Court Rules, Annotated"; the article of "Wills" in the Encyclopedia of Law and Procedure and other articles in that Encyclopedia; and Hugh Bancroft, formerly District Attorney of Middlesex County and author of "Inheritance Taxes for Investors."

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While English law considers a cheque to be a bill of exchange, the German law treats it as a different instrument, a view taken by many other Codes, and until this difference disappears, it is likely to remain an obstacle to any international unification of Exchange laws.

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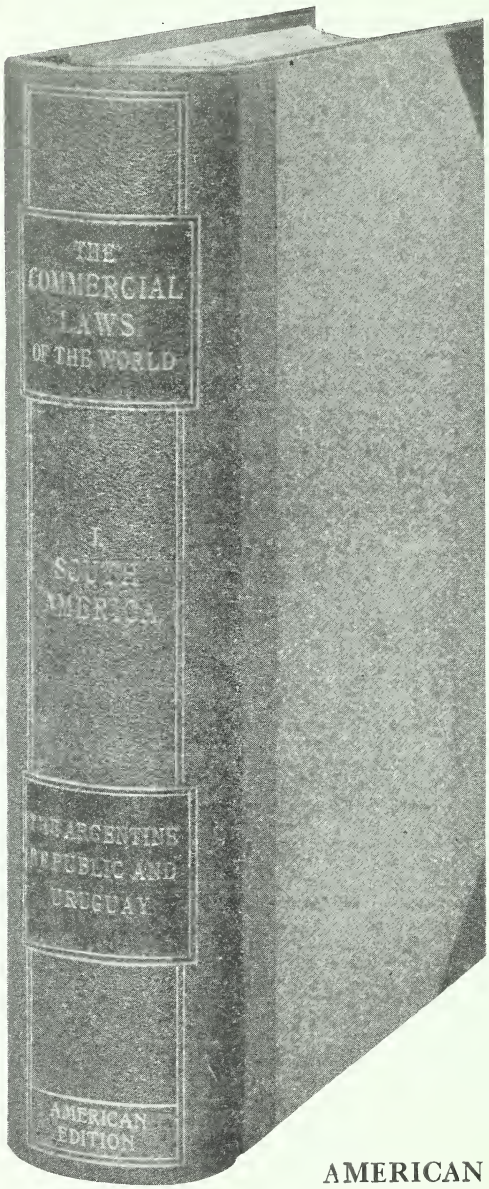


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## THE COMMERCIAL LAW OF COLOMBIA

### HISTORY

The territory now covered by the Republics of Colombia, Venezuela and Ecuador was formerly a Spanish province called New Granada.

In 1810, the people of New Granada began the movement which resulted in the formation of the Republic of Colombia, which was created by the *Ley Fundamental* published December 17, 1819. The first Constitution was promulgated August 30, 1821.

In 1830, Venezuela and Ecuador were set off and the present Republic of Colombia became the State of New Granada. This state had two constitutions, the first published in 1843, the second ten years later. In 1858, the name was changed to the "Granadine Confederation," and a new constitution was adopted, establishing the federal system. In 1863, under a new constitution, the name was again changed to the Republic of the United States of Colombia. The present constitution, which restored the central control, and changed the name to the State of the Republic of Colombia, has been in force since 1886.

### MERCANTILE LAW

Colombia, sometimes successively and sometimes simultaneously, has been governed by the laws and ordinances of Spain, and the laws and codes of the Republic.

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*I. Las Siete Partidas.* This may be considered as a digest of the laws of Spain and was compiled in imitation of the Roman Pandects. The work was projected by Ferdinand III, whose sudden death prevented its execution. Alphonso X took up the work and it was completed in 1263. The laws of the Partidas were not promulgated until 1343 and did not go into full operation until 1505. They are divided into seven parts, *Siete Partidas*, from which division the code takes its name. Each part is divided into titles and each title subdivided into laws. The first contains the canonical laws of the Catholic church. The second is a summary of ancient Spanish customs. The third, fifth and sixth contain an abridgment of the principles of Roman law on actions, suits, judgments, contracts, successions, testaments, minority and tutorship. The fifth alone has reference to commerce, although the third provides for the contract of affraightment.

The fourth treats of domestic relations. The seventh treats of crimes and punishments. The provisions of this code, which were then in force in the State of Louisana, were translated from the Spanish and published in New Orleans in 1820, by L. Moreau Lislet and Henry Carleton. No full translation into English has been made. It has been suggested that the full code should be translated under the patronage of the Comparative Law Bureau of the American Bar Association, but there is considerable opposition to such action.

*II. La Recopilacion de Indias.* In 1680, Charles II sanctioned the *Recopilacion de las Leyes de los Renois de las Indias*, for the special regulation of the American dominions. This was a collection of all the laws that had been put in force up to that time. The work was divided into nine books, subdivided into titles, and these again into individual laws.

Up to that time Spain reserved for herself all commerce with her colonies. Commerce with America was called the undertaking of the "Trading-house of Saville." Foreigners could not engage in this commerce, or even come into America, without express permission. The ninth book treats, amongst other matters of maritime commerce, of the "Casa de Contratacion de Saville." This was not as

much a code of commerce, as a collection of maxims of commercial administration and of mercantile police, confining itself to regulating at large the commercial monopoly stretched throughout her colonies by Spain.

*III. Las Ordenauzas de Bilboa.* The great development of the commerce of the City Bilboa, and the tendency, at the beginning of the 18th century, to differentiate between the mercantile and common law, resulted in the preparation of Ordinances of Bilboa, sanctioned in 1737 by Philip V. This particular compilation has been called the new or modern ordinances. As early as 1459 ordinances were made by the Clerk of the Market, at Bilboa, under the supervision of the Chief Magistrate. Later the merchants of that city gained the consular jurisdiction, and the ordinances of that Consulate were confirmed by Philip II in 1590.

The ordinances of 1737 are divided into twenty-nine chapters. The first eight chapters define the powers of the Tribunal of Commerce of Bilboa. Chapters 9 to 15 treat of *merchants, book-keeping regulations, commercial associations, mercantile contracts, trade commissions, bills of exchange, promissory notes, commercial warrants, letters of credit* and *brokers.* Chapters 16, 18 and 20 relate to Marine Commerce, regulating *seamen, affraightments, general average, shipwreck, marine insurance* and *bottomry bonds.* Chapter 27 deals with *defaulters, insolvents, bankrupts, fraudulent failures* and *bankruptcy proceedings.*

The publication of these ordinances was a great step in advance in the mercantile legislation of Spain. Their adoption by the colonies marked an expansion in their own commerce. They brought under fixed rules the limited mercantile operations of the colonial trade; they gave guaranty to good faith and credit, compelling merchants to adopt a regular system of book-keeping; they guided consular tribunals to decide fairly between merchants; and they rescued commerce from the chaos of the *Recopilacion Indiana.*

These ordinances were in full force for thirty years after the formation of the Republic, and are the ground work of a great part of the provisions of the existing codes.

*IV. La Novisima Recopilacion.* This was published in 1805 and consisted of twelve books. Books 9 and 10 relate to *Chambers of Commerce, exchanges* and *banks, merchants* and *brokers, fairs* and *markets, maritime commerce, weights and measures, carriage* and of *things prohibited.*

## SECOND PERIOD

**NATIONAL LAW**

For several years much of the Spanish law naturally continued in force in the Republic. The law of civil procedure, adopted May 12, 1825, declared in article 1 — "The order in which the laws ought to be observed in all the Tribunals of the Republic, civil, ecclesiastical, and military, regarding matters civil and criminal, is the following: — 1. The laws decreed, or which hereafter may be decreed, by the Legislative Power; 2. The proclamations, letters patent, regulations, decrees, and ordinances of the Spanish Government, sanctioned prior to the 18th March, 1808, which were observed under that government in the territory which now forms the Republic; 3. The Laws of the *Recopilacion de Indias;* 4. The Laws of the *Nieva Recopilacion de Castilla* and 5. Those of the *Siete Partidas.*"

Upon the establishment of the Republic, the ports of the country were thrown open to universal trade, without limitations of any kind. Such action being a departure from the former custom, it was necessary, from time to time, to enact new laws, with the result that after a few years the law regulating commerce was in a very chaotic condition.

## THIRD PERIOD

**THE CODES**

The Spanish mercantile legislation prevailing at the beginning of the 19th century, formed from so many and diverse elements, to which were joined the laws of the new South American states, could not continue long in force in the new republic. It was replaced in Spain by the Code of Commerce of 1829, based on the French code of 1807.

The new South American republics found it necessary to adopt a legislative system of their own, adapted to their own peculiar circumstances. This could not be done at once and the Spanish laws continued in force for several years after the republic was proclaimed. The task of codification was finally completed and the whole Colombian system of laws was divided into various codes.

**CODE OF COMMERCE 1853**

The legislators of 1853 sought to supplant the then existing legislation by a National Code. As Spain had adopted a new code in 1829, it was thought expedient in Colombia to adopt that work, which was reproduced almost textually in the Commercial Code adopted June 1st, 1853, except the provisions in the Spanish Code on commercial jurisdiction and procedure, these matters being regulated by the law of June 16th, 1853, "upon Tribunals and Procedure in matters of Commerce."

As the constitution of 1858 authorized the individual states of the republic to pass their own laws, except as to maritime commerce, no part of the Code of 1853 was in force as a National Code after 1858 except relative to maritime commerce.

**STATE CODES**

Several of the states adopted, as the law peculiar to itself, the Code of Commerce of 1853, while others adopted a modified form of that code.

**CODE OF MARITIME COMMERCE**

Until the present constitution was adopted in 1886, there existed a diversity of mercantile legislation in Colombia; the national, as to maritime commerce, and that of the states, as to inland commerce. In 1870, there was published the "Commercial Code for the United States of Colombia," being in substance the Code of Commerce of Chile, in so far as it related to maritime commerce. The provisions of this code have since continued in force.

**CODES IN FORCE**

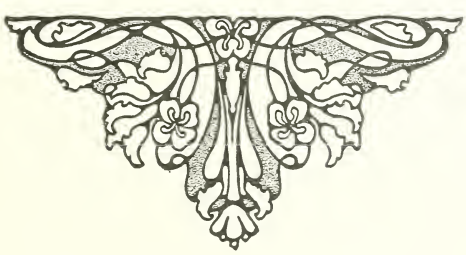
The constitution of 1886, which is now in force, provided for the unification of national legislation. In consequence, the present Colombian Code regarding Inland Commerce is the same as that of Panama, adopted in 1869, and of Maritime Commerce is the National Code of 1870. The two strictly form one single code, as both were taken from the Commercial Code of Chili published in 1865, with slight alterations however, and without the same distribution into the books forming it.

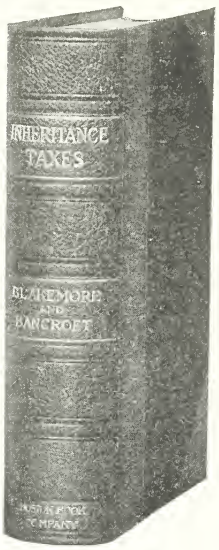
**CONCLUSION**

We now have in English a translation of the Commercial laws of the Argentine Republic, Uruguay and Colombia. All three were originally Spanish colonies, and their laws are in the main derived from the same sources. A careful study of the provision of the codes of these three countries shows that during the century that their law has been developed, there has always been a progress toward uniformity. We have seen that Uruguay has drawn on the Belgian and English law.

It is not unreasonable to believe that in a few years we will practically have what we can style a uniform code of Internation Commercial Law. For the first time we can very shortly study the commercial laws of all the civilized countries in one of several languages. The Commercial Laws of the World will be published in English. The same will be published in German under the title of 'Die Handelsgeletze des Erdballs," and in French under the title of "Le Droit Commercial de tous les Pays Civilisés." In the meantime trade is becoming universal. We are all seeking a world market. The demand for uniform laws in mercantile transactions will become so great that the rulers of some country will make the first step and ask that a convention be called to provide for a congress of nations for the purpose of selecting a commission empowered to draw up a code of international commercial law which shall become the law of each civilized country.

F. E. C.



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The **avoidance of inheritance taxes** forms the twenty-second chapter and contains a full discussion of the various attempts which have been made and can be made by investors to avoid paying this tax, with a full discussion of all the cases on the subject. This is illustrated by the following synopsis of that chapter, which is entitled **"Methods of Avoiding Tax."**

**§144. Any Collusive Arrangement Illegal.**
**§145. No Duty to Point out Property to Tax Officials.**
**§146. Advancements.**
**§147. Assignments by Beneficiaries.**
**§148. Brokers holding Stock in their own Name.**
**§149. Compromise of Interests under Will.**
**§150. Consideration.**
**§151. Transfers in Contemplation of Death.**
**§152. Creation of Corporation leaving Life Estate in Decedent.**
**§153. Disclaimer by Beneficiary.**
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**§159. Marshalling Local Assets and Debts.**
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**§161. Quick Transfer of Stock in Foreign Corporation.**
**§162. Premature Distribution after taking Assets out of Jurisdiction.**

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## ENGLISH STATUTORY LAW

The editor has recently talked with a number of librarians on this subject and was surprised to learn that a wrong conception had been made of the scope of Halsbury's Laws of England. Halsbury is a great work, but it is not a compilation of statutes. It is an encyclopedia of English law and should be put in the same classification as "Cyc" and similar works. For a compilation of the English statute law, one should secure the new and improved edition of Chitty's Statutes, which contains every statute in force from Magna Charta to 1910.

## INHERITANCE TAXES

The inheritance tax of reasonable provisions has so many features to commend it that we believe it will prove a permanent feature of our tax systems. See the fuller description of Blakemore and Bancroft's work on pages 4 and 10.

## "WORLD LAW"

An intimate acquaintance with the works of specialists in foundation studies is not merely an addition to a legal training, but an indispensable knowledge. See what we say about the Modern Legal Philosophy Series on page 8.

## THE RECALL

The most complete list of references yet published on the subject of the **Recall of Public Officials,** including the Recall of Judges, has just appeared in the **Bulletin of Bibliography,** Boston, issue for April, 1912. The list covers over three quarto pages, and on each reference an indication is given showing whether it is favorable to, or against, the Recall, and general discussions on the subject are also indicated. This should prove a most useful list on a subject now very much before the public. Mr. Charles Wells Reeder, of the Ohio State University Library, is the compiler.

We have a limited number of copies of this periodical. We will send a copy on receipt of 30 cents.

## COOKE AND ALCOCK'S IRISH REPORTS

Cooke and Alcock's Irish Kings Bench Reports has become so scarce that it has been reprinted in fac-simile. The publishers have fixed the price at $15.75 per copy, about double what original copies were formerly sold at. This is an indication of how scarce the Irish Reports are becoming. Complete sets are now almost unobtainable.

## USEFUL FOR LAW LIBRARIANS

We notice that Mr. Soule's book, which we have just published (1 vol., $2.50), "How to Plan a Library Building for Library Work" has a special chapter on Law Libraries, and another on State Libraries.

We also note this paragraph, which will interest lawyers everywhere: —

"A special problem may soon come, in the form of legislation for a U. S. Supreme Court Building, which must certainly provide for the Consultation Library of the Supreme Court, and perhaps for a great part of the Congressional Law Library. Strong common sense, and able library and judicial advice, will be required to avoid smothering the very definite uses of such a building with architectural embellishments."

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**Arizona.** 6th session, Jan., 1871; 8th session, Jan., 1875.

**Arkansas.** 11th session, Nov., 1856; 12th session, Nov., 1858; 13th session, Nov., 1860; 15th session, Apr., 1864; adjourned session, Nov., 1864; 17th session, Apr., 1868; adjourned session, Nov., 1868; 18th session, Jan., 1871; 19th session, Jan., 1873; 20th session, Nov., 1874.

**California.** 3d session, Jan., 1852; 4th session, Jan., 1853; 18th session, Supplement Dec., 1869.

**Delaware.** Jan., 1855; Jan., 1859.

**Florida.** 2d session, Jan., 1869; 3d session, Jan., 1870; extra session, May, 1870; 5th session, Jan., 1872; extra session, Apr., 1872; 6th and extra sessions, Jan.–Feb., 1873; 7th session, Jan., 1874; 8th session, Jan., 1875; 9th session, Jan., 1877; 10th session, Jan., 1879; 12th session, Jan., 1883.

**Georgia.** Nov., 1859.

**Illinois.** March, 1882.

**Kentucky.** Dec., 1855, 2 vols.; Dec., 1857, 2 vols.; Dec., 1859, 2 vols.; Dec., 1865; Jan., 1867, 2 vols.; Dec., 1867, 2 vols.; Jan., 1869, 2 vols.; Dec., 1869, 2 vols.; Jan., 1871, 2 vols.; Jan., 1873, 2 vols.

**Mississippi.** Called session, Nov., 1850.

**Missouri.** Oct., 1857.

**New York.** Jan., 1881, vol. 3.

**Oregon.** Special Laws, 3d session, Oct., 1864.

## OUT OF THE WAY REPORTS

A great many of the items mentioned herein are not to be found in many libraries. The supply is nearly exhausted. In future, copies are bound to turn up only at infrequent intervals. The price is going to advance. **Check up this list and write for prices now.**

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**House of Lords.** Macqueen's Cases on Parliamentary Divorce. 1842.

**Privy Council.** Dasent's Acts and Proceedings of the Privy Council, 1542 to 1597, 27 vols. 1890 to 1903.

—— Moore's Gorham Case, 1850.

**Chancery.** Tothill, reviewed by Holborne, 24mo. London, 1820.

—— Mosely, 16mo. Dublin, 1793.

—— Romilly's Notes. London, 1872.

—— Wyatt's Practical Register in Chancery, London, 1800.

**Bankruptcy.** Bankruptcy and Insolvency Reports edited by Dasent, 1853–1855, 2 vols. in 1. 1855.

**King's Bench.** Placita Anglo–Normannica: Law Cases from Wm. I to Rich. I. Bigelow, 1881.

—— Year Books, 1678–79 edition, 11 vols. in 6, full calf binding, broad margins.

—— Calthorp's Reports of Special Cases touching several Customs and Liberties of the City of London, whereunto is annexed divers *Ancient Customs and Usages* of the said city. Reprinted 1872 from the 1670 edition.

—— March, Reports or New Cases. 4to. London, 1648. Also Second Edition, 4to. 1675.

—— William Kelynge's Reports in Chancery and King's Bench. Full antique calf. 1873 edition, reprinted from the edition of 1764.

—— Sayer's Reports of Cases in K. B. Dublin, 1790. Scarce 8vo. edition.

—— Wilmot. Notes of Opinions and Judgments delivered in different courts by Sir John Eardley Wilmot. Portrait. 4to. London, 1802.

—— Lofft. Reports of Cases in King's Bench, with some select cases in the Court of Chancery and Common Pleas to which is added the case of General Warrants and a collection of Maxims. 8vo. Dublin, 1790.

—— Dunning. Reports of Cases in King's Bench by John Dunning (Lord Ashburton) with notes to English and American Cases by Charles G. Delano. Boston, 1885.

—— Harrison and Wollaston's Reports, 2 vols. 1836–37.

—— Willmore, Wollaston and Davison's Reports. 1839.

—— Cababé and Ellis' Reports, 1882–85. London, 1885.

**Common Pleas.** Brownlow and Goldesborough's Reports, 2 parts in 1, 4to. London, 1651.

**Ecclesiastical.** Phillimore's Ecclesiastical Judgments delivered in the Court of Arches, 1867 to 1875. 1876.

—— Broderick and Freemantle. Ecclesiastical Cases relating to Doctrine and Discipline, with an Historical Introduction. 1865.

**Ecclesiastical.** Brooke. Six Judgments in Ecclesiastical Cases, 1850–72, with an Historical Introduction, Notes and Index. 1872.

—— Hale. Precedents in Causes of Office against Churchwardens and Others. 1841.

—— Tristram. Principal Judgments delivered in the Consistory Courts of London, Hereford, Ripon and Wakefield, and in the Commissary Court of Canterbury, 1872 to 1890. 1893.

—— Talbot. Modern Decisions on Ritual and kindred subjects. 1894.

**Admiralty.** Reports of Cases on Maritime Law and a selection of cases in the United States consular courts, etc. Vol. 1, 1860–64, vol. 2, 1864–67. [Crockford.] A third volume was published.

—— Aspinwall's Maritime Cases, 11 vols. 1870 to 1911.

—— Holt. Admiralty Court Cases on the Rule of the Road for preventing Collisions at Sea. 1867.

**Criminal.** Kelynge, J. Report of Cases in Pleas of the Crown. First edition, folio. London, 1708.

—— Criminal Appeals Reports, 6 vols. 1908–11 (current).

—— Temple and Mew's Criminal Appeal Cases, 1848 to 1851. 1852.

**Bail Court.** Wollaston's Practice Cases, 1840–41.

**Patents.** Davies. A collection of the most important cases respecting Patents of Inventions. 1816.

—— Macrory's Patent Cases, 1841–56. 2 parts, 256 pages, no title or index. Complete as published.

—— Cutler's Patent Reports, 27 vols. 1884 to 1911.

**Mercantile.** Megone's Company Cases, 2 vols. 1888–91.

**Real Property.** Real Property and Conveyancing Cases, 2 vols. 1843–48.

**Magistrates.** Cox Magistrates Cases, 23 vols. 1859–1909.

**Revision Courts.** Delano's Decisions (1832–35), 16mo. London, 1836.

## IRISH REPORTS

**Bernard's Cases under the Irish Church Acts.** 1872.

**Cases on Costs** (1867–91). 1892.

**Donnell's Land Cases.** 1876.

**Fitzgibbon's Practice Decisions** (1881–86). 1886.

**Greer's Land Cases,** 1881–87, and Appendix, 1898, 2 vols.

**Irish Practice Decisions** (1906–09). 1909.

**Irish Reserved Cases** (1860–64). 1865.

**Law Recorder,** old and new series. 10 vols. 1828–38.

**Milward's Ecclesiastical Cases,** 1847.

**Weekly Law Reports,** 8 vols. 1895–1902.

## SCOTCH REPORTS

**Scotch Revised Reports** [1540 to 1873] 45 vols.

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**THE AUTHOR**

Luigi Miraglia was born at Reggio in Calabria in 1846 He took his degree at Naples in 1866 and after several years of teaching was appointed Professor of the Philosophy of Law in the University of Naples. In 1873 he published "The Fundamental Principles of the Various Systems of Legal Philosophy." A second edition was published in 1893. The third and enlarged edition, published in 1903, bearing the simple title, "Philosophy of Law," is the work here translated.

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### A STATEMENT OF ENGLISH LAW

Some years ago, when the Berlin *Society for Comparative Jurisprudence and Political Economy* was projecting a series of Handbooks on the modern legal systems, Mr. Edward Jenks was asked to write the statement of English Law.

He felt unequal to it, unless he could secure the co-operation of English lawyers, willing to share the burden with him. Having succeeded in obtaining help from former colleagues, he felt that not to accept the invitation would be to neglect an opportunity of rendering a service to the study of jurisprudence.

A portion of the German edition of the work had already been published.

It was also thought that an edition, compiled especially for English and American readers, would be of value. With this idea, an edition was projected entitled **A Digest of English Civil Law.**

By this title the authors will not treat of the Civil Law as distinguished from the Common Law, but the civil branch of the Common Law as distinguished from the criminal branch.

### PLAN OF THE WORK

In spite of the many excellent treatises on English law, most lawyers have felt the need of some **handy source of information** from which an answer to a question of principle should be readily obtainable.

It is a difficult matter to state the rules of English Law in a compact form. The work aims at stating general rules only, not at anticipating every possible application of them. The reproduction of mere maxims has been avoided, as these are somewhat dangerous guides in practice. There has been no attempt to deal with conveyancing and judicial procedure.

The authors quote the authority on which their statement of the law is based. For some elementary propositions it is difficult to find express authority; and these they state on their own responsibility.

### SCHEME OF THE WORK

The work will be divided into five books: Book I, General; Book II, Obligations; Book III, Things (Property Law); Book IV, Family Law; Book V, Succession.

Book I, General, was the production of Mr. Jenks, although it is understood that every statement in the whole work is the result of careful consideration of all the contributors. This was published in 1905. It treats of Persons; Things; Legal Acts; Time; Limitation of Actions; Self-Help.

Book II, Obligations, has been completed in four parts. Part I was published in 1906, and was the production of Mr. R. W. Lee. It treats of the Law of Contract generally, covering Formation; Parties; Performance; Assignment; Discharge of Co-Debtors and Co-Creditors.

Part II was published in 1907 and was also the production of Mr. Lee. This treats of Particular Contracts.

Part III was published in 1908, and was the production of Mr. J. C. Miles. The fourth part, called Part III, continued, was published in 1910, also the production of Mr. Miles. They treat of Quasi-Contract and Tort.

Book III commences the important subject of the Law of Property. The English Land Law is full of traps for the practitioner who must always watch that some archaic rule does not spring up to wreck his plans. The ownership of land is actually increasing in importance with the growth of population, and **an exact knowledge of Land Law** is a pressing necessity for the well-equipped lawyer.

This will be the production of Mr. Jenks, and in it he will treat of: A. Land; B. Chattels Corporeal; C. Choses in Action. One part of this book was issued in 1911. In it he treats of Interests in Land. It is proposed to divide the whole of Book III into sixteen sections devoted to land, chattels corporeal and choses in action.

Book IV, Family Law, will be the production of Mr. W. M. Geldart, Vinerian Professor of English Law, Oxford.

Book V, Succession, will be the production of Mr. W. S. Holdsworth, All Souls Reader in English Law, Oxford, the author of the History of English Law.

### A CODIFICATION

While the work is called a digest, the compilation when completed will more resemble an encyclopedia of law, says one of the reviewers of the work. To call it an encyclopedia seems to us a misnomer. Being a compact and intelligent statement of the rules of English law it more nearly resembles a codification of the law.

"To reduce the bulk, clear out the refuse, condense and arrange the residuum, *so that the people and the lawyer, and the Judge as well may know what they have to practice and obey* — this is codification, nothing more and nothing less."
David Dudley Field.

There is an imperative demand in this country for an adequate statement, or rather a restatement of our law, an "expository codification," as Dean Wigmore calls it, to distinguish it from legislative codification.

The problem from our standpoint, with the vast number of the reported decisions of our federal and state courts, seems greater than that confronting the authors of the Digest of English Civil Law. One is apt to assume at first that it is impossible to make a practical statement of the American law. Mr. Justice Holmes says: "The number of our precedents when generalized and reduced to a system, is not unmanageably large. They present themselves as a finite body of dogma, which may be mastered within a reasonable time." If such is the case, why cannot the English work be used as the model for a similar work which will be a concise statement of the American law?

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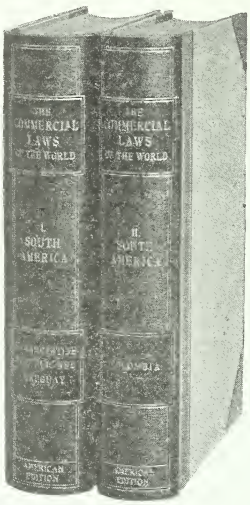


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No. 11, Vol. 4, N. S. BOSTON, MASS. October, 1912

## THE VETO POWER OF JUDGES

"How did our American doctrine, which allows to the judiciary the power to declare legislative acts unconstitutional, and to treat them as null, come about, and what is the true scope of it?"

This is the first paragraph of Professor Thayer's Essay on the Origin and Scope of the American Doctrine of Constitutional Law. (Legal essays — Thayer — p. 1.)

Mr. Roosevelt has recently published an editorial in the *Outlook* (Aug. 31, 1912), entitled, "The Judges, The Lawyers, and the People." The theme of his editorial is the danger of the non-partisan nomination of judges. He expresses a hope that in New York the Progressives "will nominate the very highest type of man for judge," and that such nominee will "stand whole-heartedly for every feature of the Progressive platform as enunciated in Chicago." He refers, of course, to what is popularly known as the "Recall of Judicial Decisions" or, as he expresses it, "the right of the people to determine for themselves whether the judges properly represent them in deciding a certain class of constitutional questions." His position appears to be that the New York Court of Appeals, in declaring the Workmen's Compensation Act unconstitutional, dealt with a question "in no proper sense of the word judicial," but exercised "the very highest legislative power, that of the final decision as to whether the law can exist at all."

"There was a time when this veto power was used with such wise caution as to avoid raising the issue of how to deal with the power when it was abused, but during the last few decades it has been used with a recklessness which has completely changed the whole bearing of the question." (*Outlook*, Vol. 101, p. 1005.)

In the course of his editorial Mr. Roosevelt refers to Legal Essays by Professor Thayer in the following words: "I wish that they would turn to the legal essays of Dean Thayer, the great Dean of the Harvard Law School, and read the first essay, that on Constitutional Law. Let them study what Dean Thayer therein says, and what he quotes from judicial opinions rendered fifty and one hundred years ago in this country, as to the extreme unwisdom of the use and abuse of this power by judges with the recklessness characterizing its use and abuse of recent years."

Professor Thayer's essay was first read as a paper before the Congress on Jurisprudence and Law Reform, on August 9, 1893, at its meeting at the World's Fair in Chicago. At that time the recall of judicial decisions was not even a mooted question. The scope of the judicial power in passing on the constitutionality of legislation was a question which he deemed of peculiar importance, and he discussed it further in his Biographical Sketch of Chief Justice Marshall. (John Marshall, Riverside Biographical Series, Houghton, Mifflin & Co., 1901.)

This power, at first strenuously denied, at last was everywhere established, but the courts regarded it as a judicial one. They held that the legislature had only a delegated and limited authority under the Constitution, that these restrictions were so much law, and to be operative they were to be interpreted by the Court.

There is no doubt but that Professor Thayer foresaw the criticism that the courts are now subjected to. He undoubtedly felt that a reform must come about. We doubt, however, that if the idea of a recall of judicial decisions had been suggested to him he would have considered it, and we are quite sure he would have seriously objected to having his writings used in support of such a position. On the other hand, he would undoubtedly have approved of the action of the American Bar Association in repudiating the idea, and would have heartily subscribed to the words of its committee: "The breaking down of constitutional safeguards does not come by open attack upon free institutions, but under the guise of the popular will. Such encroachments of power in the assumed interests of popular reform are the most subtle and dangerous of all. Do not let the courts become the subject of attack by every disappointed litigant, envious lawyer or domineering political boss."

We believe that the courts have not sought to interfere with legislation, but have been forced to do so. The fault lies with the people, the American sovereigns, not the courts. The people, by their legislative representatives, are to blame. "The people, all this while, become careless as to whom they send to the legislature; too often they cheerfully vote for men

whom they would not trust with an important private affair, and when these unfit persons are found to pass foolish and bad laws, and the courts slip in and disregard them, the people are glad that these few wiser gentlemen on the bench are so ready to protect them against their more immediate representatives." (Thayer's Marshall.)

To illustrate by an extreme case. Recently an act was passed regulating the operation of motor vehicles on public streets. One section of the act, as published on the official edition of the session laws of the state, concluded with the following paragraph:

"Nothing in this section shall be construed as in any way preventing, obstructing, impeding, embarrassing or in any other manner or form infringing upon the prerogative of any political chauffeur to run an automobilious band-wagon at any rate he sees fit compatible with the safety of the occupants thereof; provided, however, that not less than ten or more than twenty ropes be allowed at all times to trail behind this vehicle when in motion, in order to permit those who have been so fortunate as to escape with their political lives an opportunity to be dragged to death; and provided, further, that whenever a mangled and bleeding political corpse implores for mercy, the driver of the vehicle shall, in accordance with the provisions of this bill, "throw out the life-line."

Undoubtedly Professor Thayer would, in the main, have agreed that the people, not the courts, are to blame. He concludes his essay, which Mr. Roosevelt cites as an authority in support of his position, by saying that he has "no doubt our doctrine of constitutional law has had a tendency to drive out questions of justice and right, and to fill the mind of legislators with thoughts of mere legality, of what the Constitution allows. And, moreover, even in the matter of legality, they have felt little responsibility; if we are wrong, they say, the courts will correct it. Meanwhile they and the people whom they represent, not being thrown back on themselves, on the responsible exercise of their own prudence, moral sense, and honor, lose much of what is best in the political experience of any nation; and they are belittled, as well as demoralized. If what I have been saying is true, the safe and permanent road towards reform is that of impressing upon our people a far stronger sense than they have of the great range of possible mischief that our system leaves open, and must leave open to the legislatures, and of the clear limits of judicial power; so that responsibility may be brought sharply home where it belongs."

We believe that the judiciary, for whom we have the greatest respect and admiration, seek wherever possible to avoid passing upon these questions. They realize that no questions, to use the language of Chief Justice Marshall, "can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of legislative acts. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other grounds, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed."

F. E. CHIPMAN.



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**Session Laws and Statutes.** Last month we issued List No. 58 covering this material. Many of the items have been ordered already, but a few choice ones are still available. If you are interested write to us as early as possible.

**Legal Journalism in the United States.** The editor has consented to write a historical sketch of Legal Journalism in the United States to be published in the January number of the *Green Bag.* It will not be prepared as a bibliographical article but many statements of that character will naturally be included. If there is a sufficient demand for it arrangements can be made to publish the article in pamphlet form. Watch for it, and if it is deemed worthy of preservation in separate form, send an order for the pamphlet to the publishers of the *Green Bag.*

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## NOTES

**Leg. Bib. Vol. 4.** About December 15 we propose to issue No. 12, completing Vol. 4 of the new series of this publication. A limited number of title pages will be prepared, which will be sent on application to those wishing to bind up their numbers for preservation. A limited number of copies of each number have been preserved and these will be bound in half red roan uniform with the first three volumes. These will be sold temporarily at $1.50 each.

**Bibliography of Legal Periodicals.** At the Ottawa meeting of the American Association of Law Librarians the editor promised to prepare such a bibliography and publish it in Leg. Bib. This will require a vast amount of research and the examination of a great many sets scattered among the various libraries. Material is now being collected and we confidently expect to have the first installment ready for the first number of Vol. 5 to be issued probably in March, 1913. The work will not be completed in any event until the end of next year and will probably run through two years. Each installment will be copyrighted and all rights reserved to the author, with the idea of publishing the whole series of articles in book form as soon as practicable after completion.

**Leg. Bib. Old Series.** This interesting and scarce publication was issued and distributed gratuitously at irregular intervals from November, 1881, until January, 1890. During that time twelve quarto numbers were sent out. Its publication was then dropped. The new series was not started until November, 1894. In the old series a number of interesting articles appeared. "Law-Books in the British Museum," "Chief Justice Hale" and the "Learned and Laborious Coke" were among them. We made up one file the other day by finding a bundle of irregular numbers in a back closet. This copy in parts is for sale. We are going to charge a fancy price for it, but we think it is worth it. The first order received will be filled. Who wants it?

## FRITZ BEROLZHEIMER

Fritz Berolzheimer was born January 3, 1869. He is one of the most original and learned of the younger German thinkers. He is president of the International Society of Legal and Economic Philosophy; a joint-editor of the "Handbuch der Politik," and managing editor of the world's leading journal of philosophy of law.

He is the author of the five volume work, "System der Rechts- und Wirtschaftsphilosophie" (Munich, 1904–1907). The second volume of this work has been translated into English, and published under the title of "The World's Legal Philosophies."

This is a wonderful book, but just such a book as you would expect from the pen of so able a man. Don't say philosophy of law is out of your line. It is nothing more than the study of the underlying principles and causes of law. There is no harm in being familiar with that. With that knowledge it is less difficult to determine the structure and function of law. Hence this work should be read by every lawyer.

Every legislator, student of political economy and public spirited citizen should read it. The causes of law stand "in intimate relation to political science — to governmental, social, punitive, commercial, agricultural, and tariff regulations. Politics considers how new legislative situations — such as those created by the telephone, the automobile, by arbitration, by colonial relations — may be met; it faces such problems as measures of immediate regulation." The legal philosopher points out the ideal conception of legislation.

This book treats of the historical evolution of the philosophy of law and economics in their bearing on contemporary movements. The political and legal institutions of earlier times are touched on to show their influence on later developments. This historical survey goes back to the legal and economic institutions of oriental civilization.

Step by step the author advances. First to the Greek civilization, then to the Civic Empire of Ancient Rome and the moralization of Roman law. From the bondage of Mediævalism to Civic Emancipation and the rise and decline of "Natural Law." We now come to the strong part of the book — "the emancipation of the proletariat — the encroachment of economic realism. Herein the author discusses French Communism, German Socialism, Anarchism and further types of Socialism. Vital questions which are being more frequently discussed in these days of social unrest, and with which all of us should be thoroughly familiar. The last chapter is devoted to sociological reconstruction, ending with a paragraph on class and state.

This is what Dr. Berolzheimer writes: "Step by step the third estate reached the position of political supremacy and economic control under legal regulation of private interests, which while formally proclaiming the freedom of the laboring classes, actually favored their economic subjection. At this juncture the fourth estate came to its own. The laboring classes agitated for an economic emancipation to be attained

under the red badge of communism and socialism. In the closing quarter of the nineteenth century this last great act of emancipation was accomplished, and with its accomplishment we approach a new and far-reaching development."

The initiative, the referendum and the recall have come in because of political changes. The change of economic conditions must involve a fundamental change of public law. "Present-day interests sound a note of warning to the effect that the emancipation of the fourth estate must not result in the enslavement of the upper classes, must not permit the intellectual gains which civilization has achieved since the days of the Reformation, to be placed at the mercy of the powers of darkness."

"The legal representation of the legitimate interests of every economic class, and the legal guaranty of intellectual freedom, alone can secure for every class within the state, and for every individual within his class, the self-assertion, influence, and freedom which are necessary to the complete expression of each class and of its individual members as such. It is only by such means that a people can attain its efficient development and a position of influence in the commonwealth of nations."

## STATUTE LAW MAKING.

We have on the press a new work, by Chester Lloyd Jones, Associate Professor of Political Science in the University of Wisconsin, on **Statute Law Making in the United States.**

"The subject of statute-making," says Professor Stimson, in his Popular Law-Making, "is not thought difficult; it is supposed to be perfectly capable of discussion by any one of our state legislators, with or without legal training; and sometimes with lamentable consequences." More than one hundred and fifty years ago Blackstone remarked that there is no science in which so little education is supposed to be necessary as that of legislation.

Courts and with few exceptions legal text-writers confine the attention given to statutes to considerations of constitutionality and the relation of the law to other acts in the same field. There has been little attempt to reason out or to discover from the records what will make a law clear in exposition and strong in the hands of those who are to administer it. Our statute making has been mediocre. We have criticized our laws to find out what was bad; we have not tried to discover the elements that may make laws of high standard.

Such practice has contributed largely to the scant respect given our legislatures and to the present criticism of our courts. Poorly drawn laws conflict with the constitution or fail to express the intent of those who drafted them. When brought before the courts such acts are declared void or prove powerless. Public opinion then turns against both the legislature and the courts which together seem to have thwarted the people's will. Thus a low standard of lawmaking breeds disrespect for law. It is an important factor in the present wide dissatisfaction with our form of government.

This volume aims to show the standards which laws must reach to conform not to the constitution alone but to good practice. Constitutionality is the minimum not the maximum with which good laws must be measured. A discussion is given of the disadvantages under which the legislature works in America as compared with other countries. The constitutional requirements on the technical form of bills, the best arrangement of the subject-matter of statutes, and the features of style which make the law most easily understood are thoroughly treated. The last third of the volume contains an exhaustive exposition of the expedients used in making a law easily enforceable. This portion of the book is in a distinctly new field of legal writing. Though cases are freely used the background is administrative experience rather than the court decisions, for the latter declare what can and can not stand, not what makes a law efficient. The degree to which some of the time honored methods of law enforcement have failed is no more surprising than the unusual success which has attended many of the less well-known expedients.

Those whose work lies in general practice will find this volume a valuable reference, showing the requirements of form which every law must fulfill under the constitutions and the best legal usage as to phraseology. For those who have the duty of drafting statutes, the volume is a manual of practice. For legislators, for the draftsmen in our numerous Legislative Reference Libraries, for those who from private or official position seek the enactment of laws, and for text use in University classes on Legislation, this volume is a guide in a field heretofore greatly neglected by text-writers.

The book will consist of three parts, divided into twenty-one chapters, as follows:

(1) LIMITATIONS ON LEGISLATIVE ACTION.

- I. The Defective Organization of the Legislature.
- II. Constitutional Limitations on the Scope of Legislation.
- III. Constitutional Limitations on the Form of Legislation.

(2) THE DRAFTING OF BILLS.

- IV. The Titles of Bills.
- V. The Preamble.
- VI. The Enacting Clause.
- VII. The Arrangement of the Subject-Matter of Bills.
- VIII. The Language of Statutes.
  - Plainness and Uniformity of Language.
  - Mandatory and Directory Language.
- IX. The Language of Statutes (continued)
  - Unnecessary and Inaccurate Language.
  - General and Particular Terms.
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- X. Repeals.
- XI. The Clause of Taking Effect.
- XII. Amendments.
- XIII. Resolutions.
- XIV. Clauses Creating Exceptions in the Operation of Statutes.

(3) LEGISLATIVE EXPEDIENTS.

XV. Expedients for Improving the Form of Bills.
XVI. Penalties.
XVII. The Oath.
XVIII. Bonds.
XIX. Licenses and Inspection.
XX. Minor Legislative Expedients.
XXI. Statute Law Making in the United States.

## ENGLISH STATUTORY LAW

It is apparently the belief of some popular novelists that lawyers in their difficulties still uniformly consult daily Coke upon Littleton and Blackstone. Those who know better are aware that the lawyer's Bible is the "Statutes of Practical Utility" — that they are his working tools, even more than accredited text-books, or "authorized reports." More than one judge has been heard to say that with these statutes at his elbow on the bench he was apprehensive of no difficulties which might arise.

This is the English conception of the work, which in the United States is called **Chitty's Statutes,** and which has become the standard compilation of the English statute law. The plan was first developed in 1828, when the first edition was published; a second edition was published in 1851–4; the third in 1865; the fourth in 1880; and the fifth in 1894. From a small set of a few volumes it has grown so that the sixth edition, now being issued, will comprise when completed sixteen volumes.

The need of a new edition is apparent. Since the publication of the fifth edition the accessions to the statute book have been numerous and important. New legislation has been combined with or followed by consolidation of the branch of the statute law affected.

During that time it is estimated that some 400 acts have been wholly or partially repealed or amended, some 800 new acts have been passed, and about 14,000 cases interpreting acts have been decided. In the earlier editions there were but few citations of cases, but in the present edition the editors have aimed to refer to **every important case which affects** the **interpretation of a statute.**

This new edition contains all statutes of public utility from the earliest times to the end of 1910, arranged in alphabetical and chronological order. Cross-references are abundant, and where necessary, acts are printed under two or more headings. In the new edition a **date is given to each case cited,** and reference is made to where the case will be found in **Mew's Digest of English Case Law.**

Here in the United States are many users of English decisions. The English Law Reports are found on the shelves of many of our working libraries. Their owners use them, we know that, from our business correspondence. To those, the **Chitty's Statutes** are of essential importance, nay more, an absolute necessity, if they wish to know the value of the case they are citing and depending upon to bring in a decision favorable to their clients.



## JENK'S DIGEST OF ENGLISH CASE LAW

**Not the Civil Law as distinguished from the Common Law, but the civil branch of the Common Law as distinguished from the criminal.**

In August last we issued the second part of **Book III, Property Law.** This part concludes the last four titles [IX–XII] of **Section I — Interests in Land,** and the whole of **Section II — Rights and Liabilities of Occupiers of Land,** thus completing the task of defining the various interests in land recognized by existing English law.

The author notes in his preface that some "critic" may well object that the rights and liabilities specified in that section should have appeared in the volumes dealing with the law of Torts. In fact, such a treatment would clearly have been logical, but, as a matter of practice, it is not customary to treat of such rights and liabilities under the head of Torts; and, logical as the distinction may be, it is consecrated by the usage, not merely of English Law, but by Continental systems.

The authors hope to complete the Law of Real Property in another part which will appear early in the course of next year.

This part is the seventh that has been issued. **Book I — General,** was issued in one part. **Book II — Obligations** (Contracts, Quasi-Contracts and Torts) was completed in four parts. **Book III — Things** (Property-Law) will cover several additional parts. When the law of real property is completed, the authors propose to treat of Chattels Corporeal and Choses-in-Action.

The scheme of the work provides for its completion in five books. **Book IV — Family Law,** and **Book V — Succession** are yet to be published and will follow in course. The work aims at stating, in a compact form, the general rules of English Law only, not at anticipating every possible application of them, and no attempt has been made to deal with conveyancing and judicial procedure.

While the work is called digest, but being a compact and intelligent statement of the rules of English law it more nearly resembed a codification of the law.

"To reduce the bulk, clear out the refuse, condense and arrange the risiduum, *so that the people and the lawyer, and the Judge as well may know what they have to practice and obey* — this is codification, nothing more and nothing less."
David Dudley Field.

## CLIPPINGS FROM CORRESPONDENCE

**English Reports.** "It is a pity that more of our Texas lawyers have not awakened to an appreciation of the very great value of the English Reports. I refer to them as constantly as I do to the Texas Reports, and with very much more satisfaction and success."

Editor — Because of the many conflicting cases that have been decided in the United States, our courts are greatly impressed by, and carefully consider, a strong English case that is brought to their attention.

**Scholarly Books.** "I write to express my pleasure at your having undertaken the publication of " The Modern Legal Philosophy Series" and my desire to aid, as far as I may, to the success of the ambitious undertaking on the part of the committee as editors and yourselves as publishers."

Editor.— The ordinary practitioner is not interested in the philosophy of law, believing that practical jurisprudence determines what is lawful. That is true, but the philosophy of the law examines the nature of the law itself, about which every lawyer should be fully informed. Our list of subscribers to this series is steadily growing showing that the bar are realizing the necessity of this information.

**Errors Corrected.** "Find enclosed check for $9.00 in payment of "Blakemore Bancroft's Inheritance Tax Law." The book seems to be very exhaustive, but I have found two errors regarding Inheritance Tax Law in Tennessee. The first is on page 1105; the authors state that "shares of stock in Tennessee corporations seem to be exempt, because owner was a non-resident." This is contradicted by case of Memphis Trust Company v. Speed, 114 Tenn. 677, as in that case, non-resident paid tax on Tennessee property represented by stock in Tennessee corporations. I state this, because I was one of the attorneys for the state in that case, and this point was abandoned by the defendant before appeal to the Supreme Court.

The second is on page 1122. It is stated that "charities are exempt from taxation, according to Chapter 561 of Tennessee Statutes of 1903." In a manuscript opinion of the Supreme Court, in the case of Speed v. Dillard, this Act, namely Chapter 561, was held unconstitional, and since all charitable bequests have been subject to this tax."

Editor.— We think the authors should not be held accountable for their failure to know of an unreported case. We thank our correspondent for calling our attention to this matter and trust that all customers will note the change. Copies now issued are corrected in accordance with this knowledge.

**A Source of Pleasure.**—"I have received volume three of 'The Modern Legal Philosophy Series,' and the receipt of same reminded me that I have hidden away in a dark corner of my library a copy of the original, together with a number of similar works in French and German which I brought with me from the University some five years ago resolved to learn 'World Law' and keep up my languages at the same time. Needless to say that very few leaves were ever cut.

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*Applied to Legal Institutions*

England and America are slowly, very slowly coming to realize that an analysis of fundamental legal ideas and a study of the formal scope are indispensable in a refined and scientific administration of justice. But we cannot rest content with a **mastery of the form of law.** We must investigate in a scientific way its substance, its relation to life and all other reality, employing all the aids that learning affords. We must, in a word, clothe the skeleton of formal law with tissues, and provide it with organs that will make it fit for its environment and its mission in the scheme of life. Law cannot be placed in a water-tight compartment. It can only be successfully studied and applied in connection with and in relation to the realities of life. Herein lies the **necessity for the study** of the philosophy of law, which on the practical side is manifested in the **making of legal standards,** and in their application. Prof. Miraglia's treatise [*Modern Legal Philosophy Series III. Comparative Legal Philosophy*] has been selected as one of the introductory volumes of this series, partly for its intrinsic worth, and partly as a tribute to the country which alone kept alive the philosophy of law, the country of Vico, Spaventa, Romognosi and Vanni, and of the *Corpus Juris. Law Magazine and Review.*

## USEFUL FOR LAW LIBRARIANS.

We notice that Mr. Soule's book, which we have just published (1 vol., $2.50), "How to Plan a Library Building for Library Work" has a special chapter on Law Libraries, and another on State Libraries.

We also note this paragraph, which will interest lawyers everywhere:—

"A special problem may soon come, in the form of legislation for a U. S. Supreme Court Building, which must certainly provide for the Consultation Library of the Supreme Court, and perhaps for a great part of the Congressional Law Library. Strong common sense, and able library and judicial advice, will be required to avoid smothering the very definite uses of such a building with architectural embellishments."

## IMPORTATIONS AND PUBLICATIONS.

On pages 8 to 12 of this number will be found lists of the books published and imported by the BOSTON BOOK COMPANY.

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The volumes will not be issued chronologically, but generally, as the work on each country is completed. They will be issued at the rate of about one volume a month.

## THE RECALL

The most complete list of references yet published on the subject of the **Recall of Public Officials,** including the Recall of Judges, has just appeared in the **Bulletin of Bibliography,** Boston, issue for April, 1912. The list covers over three quarto pages, and on each reference an indication is given showing whether it is favorable to, or against, the Recall, and general discussions on the subject are also indicated. This should prove a most useful list on a subject now very much before the public. Mr. Charles Wells Reeder, of the Ohio State University Library, is the compiler.

We have a limited number of copies of this periodical. We will send a copy on receipt of 30 cents.

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# Legal Bibliography

No. 12, Vol. 4, N. S. BOSTON, MASS. March, 1913

## A YOUNG LAWYER'S FIRST FEE.

**George J. Denis of the Los Angeles, Cal., Bar.**

I propose telling you the true story of a young lawyer's first fee in Southern California some thirty years ago, when Los Angeles, now the Paradise of the continents, was known to but few and its future of imperial progress dreamed of by none. The young lawyer I speak of had recently hung his shingle in the village of Los Angeles, and, like the Widow Bardell, saw eligible clients pass and repass, but none inquiring within until the fateful day to which I will soon advert.

### BATHERS ROMP IN SURF.

"One silvery night in Autumn, when the waves of the Pacific ocean were rising and falling and softly splashing upon its golden sands, a party of bathers were joyously romping in the glorious bathing place which nature had provided on the brink of the western sea. No sound disturbed the exquisite entourage except the laughter of the bathers and the cadence of the soft-sounding waves. A cry for help is heard — that heart-stopping appeal of man to man when the dread finger of the White Silent One is pointed to his choice. Every effort was made to save the drowning man, but ineffectually. Having abandoned hope of rescuing their comrade, the bathers gathered together and upon a careful count found that Robert Proby must be the one of them whom the call of the ocean had claimed as its sacrifice.

"The next morning in a neat pile on the beach, his clothes were found, with his name and address, and then no question remained of his fate.

"Some weeks passed, when, in her widow's weeds, Mrs. Proby called at the local office of the insurance company in which Proby, her dear husband, had insured his life for her benefit and that of his little children. A suspicious, ignorant, or, more probably, a highly accomplished life insurance agent, demanded proofs of his death by drowning. The claim of the widow was not rejected, but suspended. Many months afterwards a vigilant deputy sheriff arrested and brought before the bar of justice, Robert Proby — "redivivus." The officer had found him working as a carpenter in a little village not far from Los Angeles.

### PROSECUTED FOR FRAUD.

"At the suggestion of Stephen M. White, then District Attorney, later a Senator of the United States, and one of the most shining ornaments of the bar of California, a grand jury indicted Proby, under a State statute, for attempting to defraud the insurance company. It was then my young friend came into his own for the county jailer (to whose tender care Proby had been consigned) advised his prisoner to test the ability of our young lawyer — all the more persuasively that Proby had no money and my friend at that time craved fame more than fees.

"Upon the trial of the case the jury was instructed to discharge the prisoner at the bar for failure of proof that the insurance company was a duly organized insurance corporation, as alleged in the indictment, and Proby and his triumphant defendant left the courtroom.

"Descending the courthouse steps, Proby put his arm around his lawyer, took from his pocket a piece of ore, and said: 'I have no money now with which to pay you for saving to my wife and my little ones not only my liberty and their food, but my honor; yet a time is coming when your half of this great mine, which share I now give to you, will make a fee for you far beyond the dreams of professional avarice. Go to any assayer. Have this piece of ore assayed and then draw any paper you would have me sign.'

"Proby then frankly told the story of his 'get-away,' and it was this: After his vocal S. O. S. on the moonlight night of which I have spoken he managed to get back to shore, put on some clothes hidden for the purpose and put out for the desert, which almost surrounds that part of Southern California in which he found himself.

### UNCOVERS SILVER ORE.

"Dragging his weary way through the interminable sands of the desert, in which was no sign of vegetation nor human habitation — naught but sand dunes, sand dunes everywhere, 'nor any drop to drink,' mad with thirst, he dug his frienzied fingers into the ground in his frantic search for water and — uncovered the shining ledge of silver ore.

"The rest of the story is short. The young lawyer took the specimen of ore to an assayer of his acquaintance, who immediately identified it as ore from a lost silver mine on the desert and fabulously rich. Tradition placed the lost mine at about where Proby described having found the ore. Some weeks passed. Proby and his lawyer frequently met. Each time he assured his benefactor that as soon as he could earn money enough from his trade as carpenter he would buy a mining outfit and, retracing the steps of his flight, would relocate the great silver mine, which was to add two millionaires to that galaxy of wealth which has created so many Socialists and has given opportunity to at least two patriots to restore government to the people, and to permit the people to recall judges and judicial decisions, though 90 per cent of the voters would not know what they were voting about.

### FURNISHES MINING OUTFIT.

"It is not difficult to imagine the impatience of this young lawyer — by this time with two clients — that his mining partner, Proby, sally forth armed cap-a-pick to rediscover the glorious spot whence had come the specimen of silver ore. The impatience of youth prevailed, and our young embryotic silver millionaire, unable to await the carpenter's delays, though later trained to those of the law, insisted upon furnishing Proby with the necessary outfit and implements with which the Great Golconda, when rediscovered, was to demonetize gold.

"And here, parenthetically, let me say that had Proby's tale been true, some thirteen years later a phantasm of a crown of gold pressed upon the brow of labor would have passed before unseeing eyes and unhearing ears. American history would have missed its most dramatic political incident and we would now be deprived of the presence of one political Dromio, leaving to us only that other one who is now urging a forgetful God to furnish to an unasking people an unasked-for Savior.

"Remonstrating, apparently unwilling, 'swearing he would ne'er consent,' Proby finally consented to accept the money necessary to buy the mining outfit with which he was to take by the throat the Phantom of the Desert, and refind and locate the Great Lost Silver Mine. Imagine, if you can, the throbbing interest of the young lawyer-mine-owner who, in his office, awaited the return of his partner, Proby, from the sand vastnesses which held their future.

### RETURNS WITH STORY.

"With leaden feet the days passed until one when Proby returned and explained how he had come in sight of the Three Buttes, the Desert Sentinels, whose presence and position fixed for him the locality, where, could he but reach it, he would be able to make his relocation, but the water he carried was nearly consumed and nature forced him to retreat. He said that the next time he went it would be with his own money.

"Again the days passed dreadfully. But Proby was again persuaded to take more money from his impatient mining partner and quondam lawyer with which to re-outfit, and thus accomplish those tempting dreams of wealth which had seduced our young lawyer friend.

"Within a week from this second departure, as he sat in his office dreaming the dreams of youth and innocence, at least mining innocence, he heard the voice of the other one of his two clients. His visitor was Bill Wilson, the owner of a store at Mojave, a town on the edge of the Great Desert, the last place at which the venturous mining prospectors stopped before dropping into that awful wilderness of sand which had yearly claimed its victims, lured into its arms by dreams of gold or lost silver mines.

"Said Wilson: "Lawyer, a man named Proby has twice come to Mojave with a prospector's outfit, a gallon of $10 whisky and a $10 box of cigars, and, with his hobo friends around him, tells the story of a sucker tenderfoot in Los Angeles who furnishes him the whisky and the cigars and the money for his outfit to relocate a great silver mine he is supposed to have found when beating his way out of Los Angeles. He has never yet started to the desert and never gets beyond the saloon in our place until his whisky and cigars are consumed, his money gone, his mining outfit sold and drunk up. Then he returns to Los Angeles to his tenderfoot sucker for more."

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**Utah.** Jan. 1872.

**West Virginia.** Jan. 1865, 1883.

**Wisconsin.** June 1848, Jan. 1849.

# LEGAL BIBLIOGRAPHY, N.S.

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## CHARLES C. SOULE.

Two months have passed since Mr. Soule's death on January 7th. He was president of this company from its incorporation until his death. During the last few years of his life he had been withdrawing gradually from the active duties of his position, and had expressed his wishes as to his successor in office.

We can add nothing to the kind words of Dr. Wigmore, in the February number of the *Illinois Law Review*, or to the statements of the editor of the *Green Bag* in his March number.

Mr. Soule occupied a distinctive place in the law-publishing world, which will probably never be filled by another.

**The Technique of Legislation.** Prof. Jones has supplied the need for a book of convenient size on this subject in his **Statute Law Making.** It is a practical handbook, and will be welcomed by all who desire improvement in the form of statutes.

**Leg. Bib. Vol. 4.** This number completes the fourth volume. To those who preserved the previous numbers of this volume and wish to bind them for library use, we will send a title page upon request.

**Leg Bib. N. S. Vols. 1 to 4.** A set of these four volumes will be supplied as long as the supply lasts at $5.00. Separate volumes, $1.50.

**University of Pennsylvania Law School Series III.** Federal Incorporation — Constitutional Questions Involved, will be ready in a few days. Price uniform with **Commercial Code of Japan** and **Early Courts of Pennsylvania.**

**Announcement.** Mr. Frank E. Chipman has been elected president of this company.

## RECALL OF JUDICIAL DECISIONS.

We have received the following communication from Prof. Ezra R. Thayer, Dean of the Law School of Harvard University, which we print in full as it supplements and fills out the article which appeared in the Oct., 1912, number of **Leg. Bib.**

Boston Book Company:

Gentlemen:

I have read with interest Mr. Chipman's article in the last issue of your Legal Bibliography discussing Professor Thayer's address on "The Origin and Scope of the American Doctrine of Constitutional Law" and President Roosevelt's endorsement of that address. I am led to add a word because Mr. Roosevelt's approval of Mr. Thayer's views has been repeatedly and cordially expressed in connection with the proposed "recall of judicial decisions," and some persons may therefore have supposed that Mr. Thayer's views tended to sanction that project. I think the error of such an impression can be made clear.

Mr. Thayer's subject was the true nature and limits of the judicial power to pass on the validity of legislation. This power, he said, was "a purely judicial one," and "its whole scope" was "to determine, for the purpose of deciding a litigated question properly submitted to the court, whether a particular disputed exercise of power was forbidden by the Constitution." Unless the question comes before the court in this way — and often it may not — the legislative action is beyond control. And even when the question is properly before the court, it must so

> "discharge its office as not to deprive another department of any of its proper power, or to limit it in the proper range of its discretion. Not merely, then, do these questions, when presenting themselves in the courts for judicial action, call for a peculiarly large method in the treatment of them, but especially they require an allowance to be made by the judges for the vast and not definable range of legislative power and choice, for that wide margin of considerations which address themselves only to the practical judgment of a legislative body. Within that margin, as among all these legislative considerations, the constitutional law-makers must be allowed a free foot. In so far as legislative choice, ranging here unfettered, may select one form of action or another, the judges must not interfere, since *their* question is a naked judicial one."[1]

And this "naked judicial" question is not whether the court believes the law in question to be constitutional, but whether such an opinion in the legislature was *rationally permissible.* It is only when the court can answer this question in the negative that it is justified in declaring the statute unconstitutional. Much of Mr. Thayer's address is devoted to showing the reality of this distinction — the distinction observed every day by courts in reviewing verdicts of juries. In the one case, no less than in the other, the court must often recognize that other views than its own may reasonably be held;

> "that having regard to the great, complex, ever-unfolding exigencies of government, much which will seem unconstitutional to one man or

[1] Thayer, Legal Essays, 9.

> body of men, may reasonably not seem so to another; that the Constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such cases the Constitution does not impose upon the legislature any one specific opinion, but leaves open this range of choice; and that whatever choice is rational is constitutional."[1]

The oft repeated proposition "that courts will never declare a statute void unless the nullity and invalidity are placed beyond reasonable doubt" is no mere cautionary phrase but marks a difference of capital importance. "The courts are revising the work of a co-ordinate department, and must not, even negatively, undertake to legislate."[2] There is a

> "vital and absolutely fundamental distinction between the legislative and the judicial question in cases of the class to which these now under consideration belong. Where our system intrusts a general subject to the legislature, nothing but the plainest constitutional provisions of restraint, and the plainest errors, will justify a court in disregarding the action of its co-ordinate legislative department, — no political theories as to the nature of our system of government will suffice, no party predilections, no fears as to the consequences of legislative action. In dealing with such questions the judges are, indeed, not acting as statesmen, but their function necessarily requires that they take account of the purposes of statesmen and their duties; for their own question relates to what may be permissible to a statesman when he is required by the Constitution to act, and, in order that he may act, to interpret the Constitution for himself; it is never, in such cases, merely the dry question of what the judges themselves may think that the Constitution means."[3]

Mr. Thayer was profoundly impressed with the importance of this doctrine and the danger of its disregard by the courts. This danger was inherent in the nature of things; for due deference to the legislature in respect of enactments honestly regarded by the court as both vicious and unconstitutional requires a fine restraint and a large point of view. He saw more clearly than some others whither led the road on which courts had already entered in interpreting "liberty" and "property"; and in the light of recent experience his warnings are impressive.

> "This leaves to our courts a great and stately jurisdiction. It will only imperil the whole of it if it is sought to give them more. They must not step into the shoes of the law-maker."
>
> "*Under no system can the power of courts go far to save a people from ruin; our chief protection lies elsewhere.*"
>
> "The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. It is no light thing to do that.
>
> What can be done? It is the courts that can do most to cure the evil; and the opportunity is a very great one. Let them resolutely adhere to first principles. Let them consider how narrow is the function which the constitutions have conferred on them,— the office merely of deciding litigated cases; how large, therefore, is the duty intrusted to others, and above all to the legislature. It is that body which is charged, primarily, with the duty of judging of the constitutionality of its work. The constitutions generally give them no authority to call upon a court for advice; they must decide for themselves, and the courts may never be able to say a word. Such a body, charged, in every state, with almost all the legislative power of the people, is entitled to the most entire and real respect; is entitled, as among all rationally permissible opinions as to what the Constitution allows, to its own choice. Courts, as has often been said, are not to think of the legislators, but of the legislature, — the great, continuous body itself, abstracted from all the transitory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a co-ordinate department of the government, charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.
>
> "To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the court remains untouched; it cannot rightly attempt to protect the people, by undertaking a function not its own. On the other hand, by adhering rigidly to its own duty, the court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation. The judiciary, today, in dealing with the acts of their co-ordinate legislators, owe to the country no greater or clearer duty than that of keeping their hands off these acts wherever it is possible to do it."[4]

Some courts have not regarded these warnings, and in their mouths the rule that legislation should not be set aside unless its inconstitutionality was clear beyond a reasonable doubt has "become a mere courteous and smoothly transmitted platitude." These courts have done their duty as they saw it; but they have none the less erred in fundamental conceptions of constitutional law, and "in the milder method of usurpation of power by decisions have encroached upon the field of legislation."[5] Such things as Mr. Roosevelt's proposal and the state of public feelings from which it sprung are the precise evils against which Mr. Thayer's warnings were directed. And they have followed as the night the day upon the court's failure to recognize the scope of legislative power.

Among the evils which such judicial action brings in its train is suspicion of other decisions involving no such error, and needless attacks on our constitutional system to secure ends attainable by means now at hand. These are to be expected from ardent reformers distinguished for courage and acuteness rather than sanity or patience, whose lack of training in the law leaves them unaware of the flexibility and scope of our existing constitutional machinery.

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[1] Thayer, Legal Essays, 22.
[2] Thayer, Legal Essays, 29.
[3] Thayer, Legal Essays, 30n.
[4] Thayer, Legal Essays, 32–33, 39, 41n.
[5] McCarthy, The Wisconsin Idea, 267.

The plan for the "recall of judicial decisions" has been much discussed and misunderstood. Its scope has not always been clear, and may have been somewhat wider at the outset than afterwards. But in time, with Mr. Roosevelt's indorsement, it took the shape of a proposed amendment to the "due process" clause of state constitutions, providing that under certain conditions a statute which the court has held to contravene this clause may nevertheless stand if approved by popular vote.[1] In this form its novelty and injurious tendencies are not more conspicuous than its feebleness and inaptness. The power ostensibly given to the voters to do what the court regards as a deprivation of liberty or property without due process of law would be illusory; for the Fourteenth Amendment is expressly excluded from the project. And so whether the "due process" clause of the state constitution is amended in Mr. Roosevelt's way, or in the ordinary way, or is repealed altogether, the unqualified prohibition against taking liberty or property without due process of law remains in force against both legislature and voters just as before. And the Fourteenth Amendment gives the court the same power and duty as before to render the objectionable decision. The whole project is thus reduced to a roundabout attempt to obtain a review of the decision in Washington, preceded by a popular demonstration against the court.

These features of the proposal make its local and temporary character pretty plain. One of its ablest advocates has described it as " a good weapon with which to stay the proposed recall of judges."[2] Another might see in it a club to brandish before a particular tribunal. Such ends it may serve for the moment, but its tendencies for the future make it an ugly weapon to use; and they are precisely the tendencies against which Mr. Thayer's argument is directed.

This may be brought out by supposing that the proposed clause permitting the rehabilitation of legislation by popular vote after an adverse decision of the court were attached to the Fourteenth Amendment, where it would mean something. Logically and inevitably Mr. Roosevelt's proposal leads to this, whatever may have been its original purpose. Or suppose the business of protecting life, liberty, and property be entrusted to the states as of old, the Fourteenth Amendment repealed, and the referendum provision added to the "due process" clause in the state constitution.

The merit of this plan as against the present method of constitutional amendment is a question which should not be confused by clamor about matters beside the point — such as the injustice of allowing a writ of error to the Supreme Court of the United States when the law is sustained and denying it when the law is overthrown — or difficulties unduly clogging constitutional amendment in some states — or the supremacy of the popular will. The lack of a proper appeal to Washington is due to a defect in the Judiciary Act, which may be remedied by a mere amendment of that Act. If the procedure for amending the constitution is too slow or cumbrous in any state, all that is needed is to make it less so. The machinery differs widely in different states, and the right amount of deliberation to require before a change is permitted would be just as real a question under Mr. Roosevelt's plan as it is now. And as to the popular will, it is plain enough that when constitutional limitations, whether rightly construed or wrongly, prevent wise legislation which the community demands, those limitations must give way. The question is why this result should not be brought about by constitutional amendment in the regular way; and it is not hard to see that the demand for some other method is based on hostility to the very conception of judicial control over legislation.

Constitutional amendments in various forms will meet the difficulty. In the case of a workmen's compensation act, for example, such legislation, described in general terms, may be specifically authorized by an amendment to the "due process" clause. Or the disadvantages of such piecemeal amendment may be met, as Dean Ballantine has proposed,[3] by a broader declaration that the legislature may declare any business public and subject it to any regulations which do not preclude a reasonable return on the investment. Or the "due process" clause may even be repealed altogether as to legislative action and the citizen left to such constitutional safeguards as remain. Whichever be the form, no change is made in the system. The legislature still has absolute power within the range of permissible interpretation, and whether this limit has been overstepped is a question for the court.

Under the proposed system, on the contrary, the form of a constitutional limitation remains, but it is binding only to such an extent and in favor of such persons as the majority of voters may choose. The citizen thus has no rights which the legislature and the majority acting together are bound to respect.

In considering the merits of this project, an important feature of our present system must not be forgotten. As Mr. Thayer puts it,

> "Great and, indeed, inestimable as are the advantages in a popular government of this conservative influence, — the power of the judiciary to disregard unconstitutional legislation, — it should be remembered that the exercise of it, even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside." "Our doctrine of constitutional law has had a tendency to drive out questions of justice and right, and to fill the mind of legislators with thoughts of mere legality, of what the constitution allows. And moreover, even in the matter of legality, they have felt little responsiblity; if we are wrong, they say, the courts will correct it. Meantime they and the people whom they represent, not being thrown back on themselves, on the responsible exercise of their own prudence, moral sense, and honor, lose much of what is best in the political experience of any nation; and they are belittled, as well as demoralized."[4]

Here is a real evil of our present system, outweighed nevertheless by its advantages. The

[1] Ransom, Majority Rule and The Judiciary, 115.
[2] A. M. Kales, 7 Ill. Law Rev. 153.
[3] 19 Case & Comment, 229.
[4] Thayer, Legal Essays, 40n., 38-39.

"recall of judicial decisions" preserves and increases the evil, and throws away the advantages. The sense of responsibility in the legislature is still further diminished. Not merely is it tempted to shift to the court the question of constitutionality, but it is given the further relief of an appeal to the electorate as well. It might well "come about that laws would be passed simply for the purpose of having them declared unconstitutional, and then by a popular vote overturning the decision of the court."[1] So profound a distrust of the legislature is involved in the project that its supporters urge as an objection to the proposed New York amendment authorizing a workmen's compensation act that it may give the legislature *too much power* — in other words, that the legislature should not be trusted to go a step beyond the "due process" clause as applied by the Court of Appeals in the Ives case without a referendum on the details of the act. If our constitutional system is to be made over on the theory that even this meed of confidence is to be denied to our legislatures, they will indeed be "belittled as well as demoralized."

The function of the court is reduced to a preliminary step in a referendum, which is postponed until it shall appear by the court's decision that somebody's constitutional rights have been violated. When the court has declared that a litigant has rights the voters are to decide whether his rights[2] (and those of others in like cases) shall be respected. The systematic and consistent development of constitutional principles is left to the voters at the polls; but the court is to help them, performing its subordinate and advisory fuuction in the apprehension of popular reversal, and with a body of precedent made up of its own former decisions and the reversals thereof at the polls on appeal. A judicial decision on a point of private right is made the starting point of the referendum, and the court's reward for putting principle above popularity is a popular nullification of its decree. Such a measure is aptly contrived to strike at the dignity and independence of the judiciary.

The more violent, but more straightforward, method of abolishing altogether the court's control over legislation has healthier features. Such a step would be lamentable enough; but it would still leave an honest and rational system. It is the system which exists in England today, unsatisfactory as her colonists in Australia seem to have found it.[3] The Constitution would stand only as a declaration of principles addressed to the legislative conscience. The source of ultimate authority, and the responsibility going with it, would be clear. There would be no show of constitutional safeguards, general in terms, and ostensibly enforced by the courts. but really meaning one thing for A and another for B at the pleasure of the voters. At least there would be no attack on the conception of government by law.

It is not likely that the proposal could be adopted as to one part of the Constitution without its ultimate extension to others. This is not admitted by its supporters, from whom it comes in mild, if questionable, shape. Advocates of the project have repeatedly insisted that it had no application to "specific clauses" of the Constitution and that fears of legislation giving A's property to B without compensation — achieving social justice, perhaps, at the expense of the unduly rich by turning his private domain into a public playground — were groundless. But such conservatism seems to be already out of date in Massachusetts, where gentlemen of prominence are advocating a measure (House Bill No. 1243) authorizing a "recall of judicial decision" *in all cases* when a "law otherwise duly enacted by the legislative authority of the Commonwealth shall be held by the Supreme Judicial Court to be in violation of the Constitution". But the conception of a constitutional system in which the validity of legislation is to be determined by the court as to one part and by popular vote as to another does not suggest permanency. Certainly the "police power" could not be made the line of division, as some seem to have thought. This is merely to take refuge in the vagueness and error which surround that phrase, as if it imported some mysterious higher power not subject to constitutional restriction. As Mr. Thayer has said,

> "Discussions of what is called the 'police power' are often uninstructive, from a lack of discrimination. It is common to recognize that the subject is hardly susceptible of definition, but very often, indeed, it is not perceived that the real question in hand is that grave, difficult, and fundamental matter, — what are the limits of legislative power in general In talking of the 'police power,' sometimes the question relates to the limits of a power admitted and fairly well-known, as that of taxation or eminent domain; sometimes to the line between the local legislative power of the States and the Federal legislative power; sometimes to legislation as settling the details of municipal affairs, and local arrangements for the promotion of good order, health, comfort, and convenience; sometimes to that special form of legislative action which applies the maxim of *Sic utere tuo ut alienum non ladeas*, adjusts and accommodates interests that may conflict, and fixes specific limits for each. But often, the discussion turns upon the true limits and scope of legislative power in general,— in whatever way it may seek to promote the general welfare."[4]

A boundary line incapable of definition would seem to lack the feature which makes it a boundary line. But since "that vast, unclassified residue of legislative authority which is called, not always intelligently, the 'police power,' " is like all other legislative power, subject to the re-

[1] Roe, Our Judicial Oligarchy, 219.

[2] We are sometimes told that the project "has nothing to do with the 'decision' or judgment in any suit." (Ransom, Majority Rule and The Judiciary, 113.) If this is so, then a popular vote rehabilitating the workmen's compensation act after the decision of the New York Court of Appeals in the Ives case would have conferred the benefits of the act on all other injured workmen and left Ives alone without them. The justice of such a result is not apparent.

[3] The High Court of Australia continues to pass on the question whether an act "is a valid exercise of the legislative powers of the Commonwealth Parliament," and to treat as invalid legislation "not authorized by the Constitution" (*R.* v. *Barger* 6 Com. Law Ref. 41, 63, 81), following decisions of our own courts, and seemingly unafflicted by the rather unintelligible opinion of the Privy aouncil in *Webb* v. *Outrim*, (1907) A. C. 81.

[4] Thayer, Legal Essays, 27n.

straints of the Constitution, the proposal rightly understood must be to attach the proposed referendum to some specific constitutional limitation. If it is to be attached to the limitation which chafes the public will today, it will naturally be extended to that which does the same thing tomorrow. As Mr. Root has finely said:

> "We must choose between having prescribed rules of right conduct, binding in every case so long as they exist, even though there may be occasional inconvenience through their restraint upon our freedom of action, and having no rules at all to prevent us from doing in every case whatever we wish to do at the time. We cannot maintain one system in part and the other system in part. The gulf between the two systems is not narrowed, but greatly widened by the proposal to dispense with the action of a representative legislature and to substitute direct popular action at the polls. A sovereign people which declares that all men have certain inalienable rights, and imposes upon itself the great impersonal rules of conduct deemed necessary for the preservation of those rights, and at the same time declares that it will disregard those rules whenever, in any particular case, it is the wish of a majority of its voters to do so, establishes as complete a contradiction to the fundamental principles of our government as it is possible to conceive. It abandons absolutely the conception of a justice which is above majorities, of a right in the weak which the strong are bound to respect. It denies the vital truth taught by religion and realized in the hard experience of mankind, and which has inspired every constitution America has produced and every great declaration for human freedom since Magna Charta — the truth that human nature needs to distrust its own impulses and passions, and to establish for its own control the restraining and guiding influence of declared principles of action."
>
> EZRA RIPLEY THAYER.

## LEGAL ESSAYS — THAYER.

This volume may be expected to take a permanent place in legal literature, and to be read over and over again. On every page one sees the work of a master, whose originality was matched by his learning, and whose gracefulness of expression was equalled by this good sense. — *Harvard Law Review.*

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